

**Fletcher Tilton** PC  
Attorneys at law

**The Guaranty Building**

370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

December 20, 2011

**The Meadows**

161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

Via Electronic Filing to: Electronic Comment Filing System of FCC

**Cape Cod**

171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500  
FAX 508.459.8300

Request for Review/ Letter of Appeal  
FCC  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**FletcherTilton.com**

RE:	CC Docket No.:	02-6
	Form 471 Application No.:	84941
	Funding Year:	1998
	Applicant /Billed Entity Name:	Eagle Hill School
	Billed Entity Number:	90
	FCC Registration No.:	0012462552
	Funding Request No.:	85128
	SPIN:	143008855
	Service Provider Name:	Drahthaus Residential Networking, Inc.

Dear Sir or Madam:

This office represents the above-named Form 471 applicant, Eagle Hill School (the "School"). The purpose of this letter is to request FCC review of the decision of the Universal Service Administrative Company ("USAC") to adjust the School's funding commitment and seek recovery of certain funds disbursed. The specific decision under appeal is set forth in a Notification of Commitment Adjustment Letter from USAC dated August 23, 2011 (copy enclosed as Exhibit 1) which concerns Funding Request Number 85128 (the "Decision").

According to the above-referenced Decision, "funds were committed in violation of Program rules", and the School "is responsible for all or some of the violations. Therefore, the [School] is responsible to repay all or some of the funds disbursed in error (if any)." According to the Funding Commitment Adjustment Report included with the Decision, the sum of \$77,429.55 (the "Debt") is sought to be recovered from the School.

{Client Files/26284/0003/00915733.DOCX }

Please direct all correspondence to our Worcester office.

FCC Appeal Letter

December 20, 2011

Page 2

By way of background, USAC initially approved the School's funding year 1998 request for internal connections to individual student dormitory rooms by letter dated February 9, 1999. Although the internal connections were for reaching dormitory rooms, the School explained that because structured study halls are held in the students' dormitories for a minimum of two (2) hours each night, and because its learning disabled students are required to be in their rooms during those periods and the regular dormitory counselors are joined by paid teachers, the dormitories should be treated as acting classrooms for purposes of funding under the E-rate program. In fact, prior to filing its application the School inquired and was directed in correspondence from the Schools and Libraries Commission ("SLC") Questions Department to include the dormitories as an "eligible item" on its Form 471 application. The SLC directive reads in relevant part as follows: "Since your unique setting and need for services extends beyond a traditional classroom setting – an association can be made to indicate that the dormitories are "acting" classrooms during the two hours per evening you cited – and therefore would meet the definition of eligible." (Copy enclosed as Exhibit 2).

The commitment letter that followed, which included the request for internal connections to the dormitories, was subsequently approved, thereby evidencing authorization by the SLC. Years later, after the funds were spent and the project completed, USAC reversed its funding for internal connections and found the School dormitory connections ineligible for E-rate funding. Thereafter, USAC sought recovery of the funds it had disbursed to the School for internal connections.

Citing USAC's prior approval of the School's funding request, the School filed a request for review of the USAC's decision with the Federal Communications Commission (the "FCC") by letter filed April 18, 2001 (See CC Docket no. 02-6). By Order dated October 20, 2009 (copy enclosed as Exhibit 3), the FCC denied the School's request for review.

Over twelve (12) years after USAC's initial approval of the School's funding year 1998 request, USAC issued the Decision to adjust the School's funding commitment and seek recovery of the Debt. The School appealed the USAC's decision by letter of appeal filed with USAC electronically on September 26, 2011 (copy enclosed as Exhibit 4). That appeal was denied by Administrator's Decision on Appeal – Funding Year 1998-1999 dated October 26, 2011 (copy

FCC Appeal Letter  
December 20, 2011  
Page 3

enclosed as Exhibit 5). The School now requests further review by the FCC of USAC's decision to deny the School's appeal.

Notwithstanding USAC's prior Decision, it should be barred from recovering the Debt from the School for the following reasons:

1. The Debt is time-barred by the applicable statute of limitations.

The purported Debt stems from an application filed in 1998. Over 13 years have passed since the applicable funding year. It is not reasonable for the USAC to determine that a program violation has occurred after the passage of 13 years. In fact, in 2004 the FCC established a limitation of five (5) years from the final delivery of service for a specific funding year to complete an investigation that may lead to discovery of a statutory or rules violation. (See FCC Fifth Report and Order dated August 13, 2004). This was done to "provide beneficiaries with certainty and closure in the E-rate applications and funding process." (FCC Fifth Report and Order, at Paragraph 32). It is unreasonable to leave the door open to recovery so many years later, particularly where the circumstances do not suggest any waste, fraud or abuse.

Moreover, even if the investigation were completed and the Debt established within five (5) years from the final delivery of service for the 1998 funding year, the Debt Collect Improvement Act ("DCIA") statute of limitations requires that action be commenced to collect the Debt within six (6) years after the right of action accrues or within one (1) year after final decisions have been rendered in applicable administrative proceedings. See 28 U.S.C. § 2415(a). In this instance, the FCC issued its decision with respect to the School's appeal on October 20, 2009. Nearly two (2) years had elapsed since the FCC's decision before USAC issued its Notification of Commitment Adjustment Letter. The two (2) year delay is outside of the DCIA statute of limitations, rendering USAC's current efforts to collect the Debt time-barred.

2. The FCC has since expanded E-rate support to internal connections for dormitory rooms at residential schools serving students with special

needs, thereby extending E-rate funding to precisely the same circumstances presented by the School in its original funding request.

In response to a 2010 Notice of Proposed Rulemaking<sup>1</sup>, the FCC made certain policy changes to the E-rate program. Those changes are reflected in the FCC's *Sixth Report and Order*, CC Docket No. 02-6 (dated September 23, 2010). Among those changes, the FCC adopted a proposal to allow residential schools that serve unique populations, including "schools designed to serve students with physical, cognitive or behavioral disabilities", to receive E-rate funding for all supported services provided in the residential areas of those schools.

Consequently, the FCC reversed its prior policy and expanded discounts for internal connections in non-instructional buildings of residential schools where the use of those services meets the definition of "educational purpose".<sup>2</sup>

Quite clearly, the School, which serves a specific population of learning disabled students in a residential setting, falls squarely under the category outlined above, and its internal dormitory connections would be eligible under the FCC's current policies. Under the circumstances, it would indeed be unconscionable to enforce a rule that no longer applies against the School, particularly where the School was originally informed that the services were eligible, received the funding for those services, completed the project and nearly thirteen years later is being asked to refund money for services which are now clearly eligible for E-rate funding. The policies contained in the *Sixth Report and Order* should be applied retroactively in this case. The totality of the circumstances militates against seeking recovery of the Debt from the School.

3. USAC is estopped from asserting the Debt based on prior confirmation from USAC that it was not seeking to collect the Debt from the School.

---

<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872 (2010) (*E-rate Broadband NPRM*).

<sup>2</sup> In the *Schools and Libraries Second Report and Order*, the FCC clarified the scope of what constitutes "educational purposes" and defined them as follows: "[A]ctivities that are integral, immediate, and proximate to the education of students . . . ."

FCC Appeal Letter

December 20, 2011

Page 5

In April of this year, the School received a copy of a Demand Payment Letter from USAC addressed to Drahthaus Residential Networking, Inc. (the "Service Provider"). The letter and attached Funding Commitment Adjustment Report appeared to state that the Service Provider was responsible for repayment of the Debt, however some ambiguous language in the letter caused the School to question whether USAC intended to hold both the Service Provider and the School responsible for repayment of the funds.

After reviewing the Demand Payment Letter and other related materials, the undersigned spoke with Megan Allred of USAC and requested clarification of USAC's position with respect to the School's responsibility for the Debt. Our exchange was assigned case number 22-222928 by USAC. I subsequently forwarded relevant documentation to Ms. Allred by electronic mail.

Ms. Allred called me after having reviewed the documents I provided and informed me definitively that USAC was seeking repayment solely from the Service Provider. She further stated that USAC would take no collection action against the School and that the non-payment of the Debt by the Service Provider would not adversely affect the School's "Green Light" status with the FCC. A copy of Ms. Allred's confirming e-mail is enclosed as Exhibit 6.

Thereafter, I wrote a letter for the purpose of confirming USAC's final determination that the Debt is the sole responsibility of the Service Provider. In response, I received the enclosed e-mail from Susan Budilowsky confirming same (confirmatory e-mail and copy of my prior correspondence to USAC relative thereto is enclosed as Exhibit 7).

Given the repeated prior assurances from USAC that the Debt is not the responsibility of the School, which assurances the School relied on, USAC is estopped from now asserting that the School is liable for repayment of the Debt.

Based upon the foregoing, the School hereby requests that the FCC grant the School's request for review, that USAC be ordered to cease all efforts to

FCC Appeal Letter

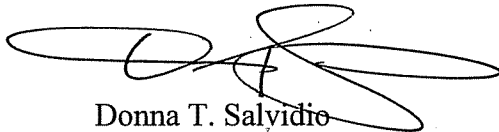
December 20, 2011

Page 6

recover the Debt from the School and that USAC be directed to release the School from responsibility for payment of same.

Please direct all inquiries and correspondence concerning this request for review to the undersigned, whom is authorized to discuss this matter on behalf of the School. My complete contact information is below. Thank you.

Very truly yours,



Donna T. Salvidio

**Direct Telephone:** (508) 459-8072

**Direct Facsimile:** (508) 459-8372

**E-mail:** [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)

Enclosures

cc: PJ McDonald, Headmaster (via electronic mail)  
Eagle Hill School  
P.O. Box 116  
242 Old Petersham Road  
Hardwick, MA 01037

Brain Riach  
Drahthaus Residential Networking, Inc.  
24 Hilltop Avenue  
Jefferson, MA 01522

# EXHIBIT 1



Schools and Libraries Division

Notification of Commitment Adjustment Letter  
(Funding Year 1998: July 1, 1998 - June 30, 1999)

August 23, 2011

CHRIS HYNES  
EAGLE HILL SCHOOL  
242 Old Petersham Road  
P.O. Box 116  
Hardwick, MA 01037

Re: Form 471 Application Number: 84941  
Funding Year: 1998  
Applicant's Form Identifier:  
Billed Entity Number: 90  
FCC Registration Number: 0012462552  
SPIN: 143008855  
Service Provider Name: Drahthaus Residential Networking, Inc.  
Service Provider Contact Person: Brian Riach

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).



TO APPEAL THIS DECISION:

You have to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

## FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Brian Riach  
Drahthaus Residential Networking, Inc.

Funding Commitment Adjustment Report for  
Form 471 Application Number: 84941

Funding Request Number: 85128  
Services Ordered: INTERNAL CONNECTIONS  
SPIN: 143008855  
Service Provider Name: Drahthaus Residential Networking, Inc.  
Contract Number:  
Billing Account number:  
Site Identifier: 90  
Original Funding Commitment: \$519,779.70  
Commitment Adjustment Amount: \$161,146.82  
Adjusted Funding Commitment: \$358,632.88  
Funds Disbursed to Date: \$436,062.43  
Funds to be Recovered from Applicant: \$77,429.55  
Funding Commitment Adjustment Explanation

After a thorough investigation, it has been determined that this funding commitment must be reduced by \$161,146.82. During a review, it was determined that services were installed at an ineligible entity/ies. Eagle Hill's use of a dormitory room for tutoring for two hours a night does not qualify it to receive E-rate discounts for internal connections. FCC rules require that discounts are to be provided only to eligible entities. Internal connections were installed in dormitories; which are not considered eligible entities. Accordingly, USAC will reduce the commitment by \$161,146.82 and seek recovery of any improperly disbursed funds from the applicant.

# **EXHIBIT 2**

Subject: a3  
Date: 98-04-10 18:55:59 EDT  
From: QUESTION@slcfund.org (SLC QUESTIONS)  
To: EHSDevel@aol.com

unknown address

> \_\_\_\_\_  
> From: Mail Delivery  
> Subsystem[SMTP:Mailer-Daemon@relay3.smtp.psi.net]  
> Sent: Friday, April 10, 1998 4:13 PM  
> To: QUESTION@slcfund.org  
> Subject: Returned mail: Host unknown (Name server: smtp:  
host  
> notfound)  
>

> The original message was received at Fri, 10 Apr 1998  
17:13:55 -0400  
> (EDT)  
> from [204.76.13.227]  
>

> — The following addresses had permanent fatal errors —  
> <aol.com.EHSDevel@SMTP>  
>

> — Transcript of session follows —  
> 550 <aol.com.EHSDevel@SMTP>... Host unknown (Name  
server: smtp: host  
> not found)  
>

> — Original message follows —  
>

> Return-Path: <QUESTION@slcfund.org>  
> Received: from mail.neca.org by relay3.smtp.psi.net  
> (8.8.5/SMI-5.4-PSI)  
> id RAA11770; Fri, 10 Apr 1998 17:13:55 -0400 (EDT)  
> Received: from [204.76.8.27] by mail.neca.org  
> via smtpd (for relay3.smtp.psi.net [38.8.210.2]) with  
SMTP;  
> 10 Apr 1998 21:10:57 UT  
> Received: from Domain1-Message\_Server by slcfund.org  
> with Novell\_GroupWise; Fri, 10 Apr 1998 17:14:38 -0400  
> Message-Id: <s52e537e.072@slcfund.org>  
> X-Mailer: Novell GroupWise 4.1  
> Date: Fri, 10 Apr 1998 17:13:58 -0400  
> From: SLC QUESTIONS <QUESTION@slcfund.org>  
> To: aol.com.EHSDevel@SMTP  
> Subject: a3  
> Mime-Version: 1.0  
> Content-Type: text/plain  
> Content-Disposition: inline  
>

> Your question is complex and has many possible answers  
depending on  
> what services you are applying for. Based on a two hour  
instructional  
> program in the evening - in your dormitories - you should have  
> carefully  
> analyzed what services will be needed (i.e. basic phone

service,  
> internet access, etc.)for this setting. Hopefully this process  
was  
> done  
> prior to your 470 web posting. If so, and if you already have an  
> executed  
> contract for these evening services (in your domms), then you  
should  
> request these services on your 471 application. Please keep in  
mind,  
> that  
> the 471 (request for funding) must relate and correspond  
directly to  
> your  
> 470 web posting (ad for bids on services).  
> To summarize, the concept of the program is to provide  
discounts on  
> services related to classroom education/instruction (for grades  
K  
> -12).  
> Since your unique setting and need for services extends  
beyond a  
> traditional classroom setting - an association can be made to  
indicate  
> that  
> the dormitories are "acting" classrooms during the two hours  
per  
> evening  
> you cited - and therefore would meet the definition of eligible.  
> Thank you for your comments and please indicate this unique  
situation  
> as  
> an attachment to your completed form 471 application. Lastly,  
the  
> initial  
> filing window for 471 applications is SLC receipt no later than  
April  
> 15th.  
> You may file after this date but those applications will be  
considered  
> on a  
> first come - first serve basis.  
>  
> > \_\_\_\_\_  
> > From: EHSDevel[SMTP:EHSDevel@aol.com]  
> > Sent: Tuesday, April 07, 1998 2:31 PM  
> > To: QUESTION@slcfund.org  
> > Subject: Re: a3  
> >  
> > Dear Sir or Madam,  
> >  
> > I appreciate your need for clarification. I will try to provide you  
> > with as  
> > much as I can.  
> >  
> > My question references the language taken from the  
paragraph of FCC  
> > 97-157,

# EXHIBIT 3

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of the	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Eagle Hill School	)	File No. SLD-84941
Hardwick, Massachusetts	)	
	)	
Italian Home for Children	)	File No. SLD-558248
Jamaica Plain, Massachusetts	)	
	)	
Rural Alaska Community Action Program, Inc.	)	File Nos. SLD-451855, 501948
Anchorage, Alaska	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: October 20, 2009**

**Released: October 20, 2009**

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order we deny requests for review filed by Eagle Hill School (Eagle Hill), Italian Home for Children (Italian Home), and Rural Alaska Community Action Program (Rural Alaska) of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program).<sup>1</sup> We uphold USAC's decisions

---

<sup>1</sup> In this order we use the term "appeal" generically to refer to requests for review of decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). See Letter from Margaret Hurley, on behalf of Eagle Hill School, to Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 18, 2001) (Eagle Hill Request for Review); Letter from Ross Wheadon, on behalf of Italian Home for Children, to Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 5, 2007) (Italian Home Request for Review); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed July 13, 2006); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 12, 2006) (collectively, Rural Alaska Requests for Review).



denying funding to these applicants because the locations at issue were ineligible for support under the E-rate program.<sup>2</sup>

## II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> Only eligible applicants may seek support for eligible services.<sup>4</sup> When USAC reviews an application and identifies an ineligible entity seeking support, it will deny funding for the requested service. Congress defined the scope of entities eligible for support as elementary and secondary schools, as defined by the Elementary and Secondary Education Act of 1965,<sup>5</sup> and as libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).<sup>6</sup> Both definitions rely on the standards set by each individual state.

3. Some internal connections within an eligible school or library may not be eligible for E-rate support. In the *Universal Service First Report and Order*, the Commission stated that “a given service is eligible for support as a component of the institution’s internal connections only if it is necessary to transport information all the way to individual classrooms.”<sup>7</sup> The Commission elaborated on this policy in

---

<sup>2</sup> Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (dated Jan. 5, 2001) (Eagle Hill Commitment Adjustment (COMAD) Letter); Letter from USAC, Schools and Libraries Division, to Ross Wheadon, Italian Home for Children (dated Sept. 11, 2007) (Italian Home Funding Denial); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated May 10, 2006); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated Oct. 16, 2006) (collectively, Rural Alaska Appeal Decisions).

<sup>3</sup> 47 C.F.R. §§ 54.501-503.

<sup>4</sup> See 47 C.F.R. § 54.501(b)-(d); USAC website, Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at 3-4 (FCC Form 471 Instructions) (explaining that only schools and libraries meeting statutory eligibility standards may apply for support for eligible services), [http://www.universalservice.org/res/documents/sl/pdf/471i\\_fy05.pdf](http://www.universalservice.org/res/documents/sl/pdf/471i_fy05.pdf) (last visited Oct. 20, 2009).

<sup>5</sup> See 47 U.S.C. § 254(h)(7)(A). The definitions of elementary and secondary schools are the definitions of those terms created by each individual state. 20 U.S.C. § 7801(18), (38). Specifically, the term “elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that the term does not include any education beyond grade 12. 20 U.S.C. § 7801(20), (38). In addition, the statute excludes schools that have endowments of more than \$50 million or operate for profit. See 47 U.S.C. § 254(h)(4).

<sup>6</sup> See 47 U.S.C. § 254(h)(4). In addition, the library must have funding independent from any school, and may not operate as a for-profit business. 47 C.F.R. § 54.501(c). The LSTA states that a “library” may include a “private library or other special library, but only if the State ... determines that the library should be considered a library for the purposes” of the LSTA. 20 U.S.C. § 9122(1)(E).

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9017-18, 9021 at para. 459 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); see also *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is “not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings . . .”<sup>8</sup> Consistent with these orders, internal connections to dormitory rooms have been found to be ineligible for support under the E-rate program.<sup>9</sup> Specifically, in the *Anderson School Order* the Bureau stated that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms.<sup>10</sup>

4. *Eagle Hill Request for Review.* Although USAC initially approved Eagle Hill’s funding year 1998 request for internal connections to individual student dormitory rooms,<sup>11</sup> a subsequent review led USAC to find Eagle Hill ineligible for E-rate funding. Thus, USAC sought recovery of the \$77,430 it had disbursed to Eagle Hill for internal connections.<sup>12</sup> In its request for review, Eagle Hill states that it asked USAC whether E-rate program rules permitted discounts on internal connections for reaching dormitory rooms at its school, since its school serves children with learning disabilities and that structured study hall periods are held in the children’s dormitories for a minimum of two hours each night.<sup>13</sup> Eagle Hill explained to USAC that, because students are required to be in their rooms during those periods and the regular dormitory counselor supervisors are joined by paid teachers, the dormitory rooms should be treated as classrooms for purposes of funding under the E-rate program.<sup>14</sup> Eagle Hill further asserts that USAC informed Eagle Hill that Eagle Hill could argue that the dormitories are “acting” classrooms during the two hours per evening and, therefore, should be eligible for E-rate support.<sup>15</sup>

5. *Italian Home Request for Review.* During a routine Program Integrity Assurance review of Italian Home’s funding year 2007 request, USAC asked Italian Home what percentage of the dollars in

---

<sup>8</sup> *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; see also 47 C.F.R. § 54.506.

<sup>9</sup> *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*). The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. The term “Bureau” in this order refers to the Common Carrier Bureau prior to the change in 2002, and to the Wireline Competition Bureau after the change.

<sup>10</sup> *Id.* at 25612, para. 6. In addition, pursuant to the Commission’s guidance on permissible funding for internal connections, E-rate funding has been denied for a teachers’ center, despite its occasional use for student classroom instruction. See *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002).

<sup>11</sup> See Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (Feb. 9, 1999).

<sup>12</sup> See Eagle Hill COMAD Letter.

<sup>13</sup> See Email from EHSDevel@aol.com to Question@slcfund.org (dated Apr. 17, 1998).

<sup>14</sup> *Id.*

<sup>15</sup> See Email from Question@slcfund.org to EHSDevel@aol.com (dated Apr. 10, 1998). Specifically, the USAC employee directed Eagle Hill in the email to “indicate [its] unique situation as an attachment to” its FCC Form 471 application. *Id.* Based on the record, it does not appear that Eagle Hill provided such an attachment to its FCC Form 471.

its funding request were for telecommunications and Internet access services for dormitory or residence rooms.<sup>16</sup> When Italian Home replied that 81 percent was associated with its four residential programs and 19 percent was associated with its day school program,<sup>17</sup> USAC determined that the 81 percent associated with its residential programs was ineligible for E-rate program support and directed Italian Home to remove those expenses or explain why funding should be granted for those services.<sup>18</sup> Italian Home responded that the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, thus 100 percent of its services should be eligible for E-rate support.<sup>19</sup> USAC, however, only granted Italian Home discounts on the 19 percent of the purchases associated with its day school program.<sup>20</sup> In its request for review, Italian Home asserts that its student population consists of emotionally disturbed and learning disabled children ages five to twelve who require 24-hour per day care.<sup>21</sup> Italian Home acknowledges that it is primarily a residential facility and that the children in its four residential programs live in three separate buildings at two locations.<sup>22</sup> Italian Home again contends, as it did in its response to USAC, that, because the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, 100 percent of its services should be eligible for E-rate support.<sup>23</sup>

6. Rural Alaska Requests for Review. USAC denied Rural Alaska's funding year 2005 and 2006 requests for E-rate discounts for its Head Start, pre-kindergarten programs after finding that the state of Alaska did not define its elementary and secondary schools to include pre-kindergarten entities, such as the Head Start programs.<sup>24</sup> In its request for review, Rural Alaska argues that the early education provided through its Head Start program is a vital part of elementary education in Alaska.<sup>25</sup> It does not, however,

---

<sup>16</sup> Italian Home Request for Review, Attachment 3 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 11, 2007)). USAC performs a Program Integrity Assurance review to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, Program Integrity Assurance, <http://www.sl.universalservice.org/reference/6pia.asp> (last visited Oct. 20, 2009).

<sup>17</sup> Italian Home Request for Review, Attachment 4 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 11, 2007) (Italian Home June 11 Letter)).

<sup>18</sup> See Italian Home Request for Review, Attachment 5 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 12, 2007)).

<sup>19</sup> *Id.*, Attachment 6 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 12, 2007) (Italian Home June 12 Letter)).

<sup>20</sup> See Italian Home Funding Denial.

<sup>21</sup> See *id.*, Attachment 2 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 6, 2007)).

<sup>22</sup> *Id.*, Attachment 4 (Italian Home June 11 Letter).

<sup>23</sup> *Id.*, Attachment 6 (Italian Home June 12 Letter).

<sup>24</sup> See Rural Alaska Appeal Decisions at 2; see also USAC website, <http://www.usac.org/sl/applicants/step01/non-traditional-k-12/k-12-eligibility-table.aspx> (last visited Oct. 20, 2009).

<sup>25</sup> See Rural Alaska Requests for Review at 1.

address the specific issue of whether its programs, as determined by state law, are eligible for discounts under the E-rate program.<sup>26</sup>

### III. DISCUSSION

7. We deny the petitioners' requests for review and uphold USAC's decisions denying funding to these applicants because the locations at issue were ineligible for E-rate program support. As indicated above, consistent with the Commission's holdings with respect to internal connections funding, internal connections to student dormitory rooms have been found to be ineligible for E-rate support.<sup>27</sup> Thus, consistent with our precedent, we find that Eagle Hill's use of a dormitory room for tutoring for two hours a night does not qualify it to receive E-rate discounts for internal connections.<sup>28</sup> Similarly, Italian Home does not qualify for E-rate discounts for its residential facilities. Italian Home asserts that the Commonwealth of Massachusetts has held that its entire program is eligible for E-rate support.<sup>29</sup> Although Congress has delegated to the states discretion over which entities in the state provide primary or secondary education and are thus eligible to apply for support under the E-rate program,<sup>30</sup> the determination of which locations within a facility – classrooms or non-classroom locations – are eligible for support falls under the authority of the Commission.<sup>31</sup> Thus, as discussed above, we find that the provision of discounted services for residential facilities is inconsistent with the Commission's E-rate rules.<sup>32</sup> Accordingly, we deny Eagle Hill's and Italian Home's requests for review.

8. Rural Alaska misunderstands the criteria for eligibility, as explained above.<sup>33</sup> Although Rural Alaska asserts that early education provided by the Head Start program is a vital part of elementary education in Alaska, Head Start programs are only eligible in Alaska if the state defines elementary education to include these programs.<sup>34</sup> In its appeal decisions, USAC correctly observed that Alaska did not define elementary education to include Head Start programs.<sup>35</sup> Therefore, we affirm USAC's decision to deny E-rate program funding to Rural Alaska.

---

<sup>26</sup> See *supra* para. 2.

<sup>27</sup> See *supra* para. 3.

<sup>28</sup> We note that the Commission has previously concluded that "in certain limited instances, the use of telecommunications services offsite would . . . be integral, intermediate, and proximate to the education of students . . . and thus, would be considered to be an educational purpose." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208-09, paras. 17-19 (2003). We find, however, that providing service to dormitories in the manner described here is not one of those exceptional cases.

<sup>29</sup> See *supra* para. 5.

<sup>30</sup> See *supra* note 5.

<sup>31</sup> See, e.g., *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd. at 5440, para. 209 (concerning the eligibility of non-instructional buildings).

<sup>32</sup> See *supra* para. 3.

<sup>33</sup> See *supra* para. 2.

<sup>34</sup> *Id.*

<sup>35</sup> See Rural Alaska Appeal Decisions.

**IV. ORDERING CLAUSES**

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by Eagle Hill School, Italian Home for Children, and Rural Alaska Community Action Program, Inc. ARE DENIED.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

# EXHIBIT 4

# Fletcher Tilton<sup>PC</sup>

Attorneys at law

**The Guaranty Building**

370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**

161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**

171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500  
FAX 508.459.8300

FletcherTilton.com

September 26, 2011

Via Electronic Mail to: [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org)

**Letter of Appeal**

Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road  
P.O. Box 902  
Whippany, NJ 07981

RE:	Form 471 Application No.:	84941
	Funding Year:	1998
	Applicant /Billed Entity Name:	Eagle Hill School
	Billed Entity Number:	90
	FCC Registration No.:	0012462552
	Funding Request No.:	85128
	SPIN:	143008855
	Service Provider Name:	Drahthaus Residential Networking, Inc.

Dear Sir or Madam:

This office represents the above-named Form 471 applicant, Eagle Hill School (the "School"). The purpose of this letter is to appeal the decision of the Universal Service Administrative Company ("USAC") to adjust the School's funding commitment and seek recovery of certain funds disbursed. The specific decision under appeal is set forth in a Notification of Commitment Adjustment Letter from USAC dated August 23, 2011 (copy enclosed as Exhibit 1) which concerns Funding Request Number 85128 (the "Decision").

According to the above-referenced Decision, "funds were committed in violation of Program rules", and the School "is responsible for all or some of the violations. Therefore, the [School] is responsible to repay all or some of the funds disbursed in error (if any)." According to the Funding Commitment Adjustment Report included with the Decision, the sum of \$77,429.55 (the "Debt") is sought to be recovered from the School.

{Client Files/26284/0001/00853872.DOCX, 2 }

Please direct all correspondence to our Worcester office.

By way of background, USAC initially approved the School's funding year 1998 request for internal connections to individual student dormitory rooms by letter dated February 9, 1999. A subsequent review by USAC found the School ineligible for E-rate funding because the School's use of dormitory rooms for tutoring for two (2) hours per night did not qualify it to receive E-rate discounts for internal connections. Therefore, USAC sought recovery of the funds it had disbursed to the School for internal connections. Citing USAC's prior approval of the School's funding request, the School filed a request for review of the USAC's decision with the Federal Communications Commission (the "FCC") by letter filed April 18, 2001 (*See* CC Docket no. 02-6). By Order dated October 20, 2009 (copy enclosed as Exhibit 2), the FCC denied the School's request for review. The FCC ruled that internal connections for reaching dormitory rooms were ineligible for E-rate funding.

While the School asserts that it asked and was told by USAC that E-rate program rules permitted discounts on internal connections for reaching dormitory rooms at its school, because structured study hall periods held in the dormitories for a minimum of two (2) hours per night in the presence of paid teachers and supervisors rendered the dormitory rooms de facto classrooms, the FCC nevertheless found these internal connections to be ineligible for support under the E-rate program. Notwithstanding the FCC's decision, USAC is barred from recovering such funds from the School for the following reasons:

1. The Debt is time-barred by the applicable statute of limitations.

The purported Debt stems from an application filed in 1998. Over 13 years have passed since the applicable funding year. It is not reasonable for the USAC to determine that a program violation has occurred after the passage of 13 years. In fact, in 2004 the FCC established a limitation of five (5) years from the final delivery of service for a specific funding year to complete an investigation that may lead to discovery of a statutory or rules violation. (*See* FCC Fifth Report and Order dated August 13, 2004). This was done to "provide beneficiaries with certainty and closure in the E-rate applications and funding process." (FCC Fifth Report and Order, at Paragraph 32). It is unreasonable to leave the door open to recovery so many years later, particularly where the circumstances do not suggest any waste, fraud or abuse.



Even if the investigation were completed and the Debt established within five (5) years from the final delivery of service for the 1998 funding year, the Debt Collect Improvement Act ("DCIA") statute of limitations requires that action be commenced to collect the Debt within six (6) years after the right of action accrues or within one (1) year after final decisions have been rendered in applicable administrative proceedings. *See* 28 U.S.C. § 2415(a). In this instance, the FCC issued its decision with respect to the School's appeal on October 20, 2009. Nearly two (2) years have elapsed since that decision, rendering USAC's current efforts to collect the Debt time-barred by the applicable statute of limitations.

2. USAC is estopped from asserting the Debt based on prior confirmation from USAC that it was not seeking to collect the Debt from the School.

In April of this year, the School received a copy of a Demand Payment Letter from USAC addressed to Drahthaus Residential Networking, Inc. (the "Service Provider"). The letter and attached Funding Commitment Adjustment Report appeared to state that the Service Provider was responsible for repayment of the Debt, however some ambiguous language in the letter caused the School to question whether USAC intended to hold both the Service Provider and the School responsible for repayment of the funds.

After reviewing the Demand Payment Letter and other related materials, the undersigned spoke with Megan Allred of USAC and requested clarification of USAC's position with respect to the School's responsibility for the Debt. Our exchange was assigned case number 22-222928 by USAC. I subsequently forwarded relevant documentation to Ms. Allred by electronic mail.

Ms. Allred called me after having reviewed the documents I provided and informed me definitively that USAC was seeking repayment solely from the Service Provider. She further stated that USAC would take no collection action against the School and that the non-payment of the Debt by the Service Provider would not adversely affect the School's "Green Light" status with the FCC. A copy of Ms. Allred's confirming e-mail is enclosed as Exhibit 3.

USAC Appeal Letter

September 26, 2011

Page 4

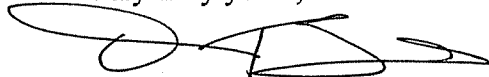
Thereafter, I wrote a letter for the purpose of confirming USAC's final determination that the Debt is the sole responsibility of the Service Provider. In response, I received the enclosed e-mail from Susan Budilowsky confirming same (confirmatory e-mail and copy of my prior correspondence to USAC relative thereto is enclosed as Exhibit 4).

Given the repeated prior assurances from USAC that the Debt is not the responsibility of the School, which assurances the School relied on, USAC is estopped from now asserting that the School is liable for repayment of the Debt.

Based upon the foregoing, the School hereby requests that USAC cease all efforts to recover the Debt from the School and release the School from responsibility for payment of same.

Please direct all inquiries and correspondence concerning this letter of appeal to the undersigned, whom is authorized to discuss this matter on behalf of the School. My complete contact information is below. Thank you.

Very truly yours,



Donna T. Salvidio

**Direct Telephone:** (508) 459-8072

**Direct Facsimile:** (508) 459-8372

**E-mail:** [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)

Enclosures

cc: PJ McDonald, Headmaster (via electronic mail)  
Eagle Hill School  
P.O. Box 116  
242 Old Petersham Road  
Hardwick, MA 01037

Brain Riach  
Drahthaus Residential Networking, Inc.  
24 Hilltop Avenue  
Jefferson, MA 01522

{Client Files/26284/0001/00853872.DOCX, 2 }

Please direct all correspondence to our Worcester office.

# EXHIBIT 1



Schools and Libraries Division

Notification of Commitment Adjustment Letter  
(Funding Year 1998: July 1, 1998 - June 30, 1999)

August 23, 2011

CHRIS HYNES  
EAGLE HILL SCHOOL  
242 Old Petersham Road  
P.O. Box 116  
Hardwick, MA 01037

Re: Form 471 Application Number: 84941  
Funding Year: 1998  
Applicant's Form Identifier:  
Billed Entity Number: 90  
FCC Registration Number: 0012462552  
SPIN: 143008855  
Service Provider Name: Drahthaus Residential Networking, Inc.  
Service Provider Contact Person: Brian Riach

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

TO APPEAL THIS DECISION:

You have to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

## FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Brian Riach  
Drahthaus Residential Networking, Inc.

Funding Commitment Adjustment Report for  
Form 471 Application Number: 84941

Funding Request Number: 85128  
Services Ordered: INTERNAL CONNECTIONS  
SPIN: 143008855  
Service Provider Name: Drahthaus Residential Networking, Inc.  
Contract Number:  
Billing Account number:  
Site Identifier: 90  
Original Funding Commitment: \$519,779.70  
Commitment Adjustment Amount: \$161,146.82  
Adjusted Funding Commitment: \$358,632.88  
Funds Disbursed to Date: \$436,062.43  
Funds to be Recovered from Applicant: \$77,429.55  
Funding Commitment Adjustment Explanation

After a thorough investigation, it has been determined that this funding commitment must be reduced by \$161,146.82. During a review, it was determined that services were installed at an ineligible entity/ies. Eagle Hill's use of a dormitory room for tutoring for two hours a night does not qualify it to receive E-rate discounts for internal connections. FCC rules require that discounts are to be provided only to eligible entities. Internal connections were installed in dormitories; which are not considered eligible entities. Accordingly, USAC will reduce the commitment by \$161,146.82 and seek recovery of any improperly disbursed funds from the applicant.

# **EXHIBIT 2**



Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of the	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Eagle Hill School	)	File No. SLD-84941
Hardwick, Massachusetts	)	
	)	
Italian Home for Children	)	File No. SLD-558248
Jamaica Plain, Massachusetts	)	
	)	
Rural Alaska Community Action Program, Inc.	)	File Nos. SLD-451855, 501948
Anchorage, Alaska	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: October 20, 2009****Released: October 20, 2009**

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order we deny requests for review filed by Eagle Hill School (Eagle Hill), Italian Home for Children (Italian Home), and Rural Alaska Community Action Program (Rural Alaska) of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program).<sup>1</sup> We uphold USAC's decisions

---

<sup>1</sup> In this order we use the term "appeal" generically to refer to requests for review of decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). See Letter from Margaret Hurley, on behalf of Eagle Hill School, to Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 18, 2001) (Eagle Hill Request for Review); Letter from Ross Wheadon, on behalf of Italian Home for Children, to Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 5, 2007) (Italian Home Request for Review); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed July 13, 2006); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 12, 2006) (collectively, Rural Alaska Requests for Review).

denying funding to these applicants because the locations at issue were ineligible for support under the E-rate program.<sup>2</sup>

## II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> Only eligible applicants may seek support for eligible services.<sup>4</sup> When USAC reviews an application and identifies an ineligible entity seeking support, it will deny funding for the requested service. Congress defined the scope of entities eligible for support as elementary and secondary schools, as defined by the Elementary and Secondary Education Act of 1965,<sup>5</sup> and as libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).<sup>6</sup> Both definitions rely on the standards set by each individual state.

3. Some internal connections within an eligible school or library may not be eligible for E-rate support. In the *Universal Service First Report and Order*, the Commission stated that “a given service is eligible for support as a component of the institution’s internal connections only if it is necessary to transport information all the way to individual classrooms.”<sup>7</sup> The Commission elaborated on this policy in

---

<sup>2</sup> Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (dated Jan. 5, 2001) (Eagle Hill Commitment Adjustment (COMAD) Letter); Letter from USAC, Schools and Libraries Division, to Ross Wheadon, Italian Home for Children (dated Sept. 11, 2007) (Italian Home Funding Denial); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated May 10, 2006); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated Oct. 16, 2006) (collectively, Rural Alaska Appeal Decisions).

<sup>3</sup> 47 C.F.R. §§ 54.501-503.

<sup>4</sup> See 47 C.F.R. § 54.501(b)-(d); USAC website, Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at 3-4 (FCC Form 471 Instructions) (explaining that only schools and libraries meeting statutory eligibility standards may apply for support for eligible services), [http://www.universalservice.org/res/documents/sl/pdf/471i\\_fy05.pdf](http://www.universalservice.org/res/documents/sl/pdf/471i_fy05.pdf) (last visited Oct. 20, 2009).

<sup>5</sup> See 47 U.S.C. § 254(h)(7)(A). The definitions of elementary and secondary schools are the definitions of those terms created by each individual state. 20 U.S.C. § 7801(18), (38). Specifically, the term “elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that the term does not include any education beyond grade 12. 20 U.S.C. § 7801(20), (38). In addition, the statute excludes schools that have endowments of more than \$50 million or operate for profit. See 47 U.S.C. § 254(h)(4).

<sup>6</sup> See 47 U.S.C. § 254(h)(4). In addition, the library must have funding independent from any school, and may not operate as a for-profit business. 47 C.F.R. § 54.501(c). The LSTA states that a “library” may include a “private library or other special library, but only if the State ... determines that the library should be considered a library for the purposes” of the LSTA. 20 U.S.C. § 9122(1)(E).

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9017-18, 9021 at para. 459 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); see also *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is “not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings . . .”<sup>8</sup> Consistent with these orders, internal connections to dormitory rooms have been found to be ineligible for support under the E-rate program.<sup>9</sup> Specifically, in the *Anderson School Order* the Bureau stated that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms.<sup>10</sup>

4. *Eagle Hill Request for Review*. Although USAC initially approved Eagle Hill’s funding year 1998 request for internal connections to individual student dormitory rooms,<sup>11</sup> a subsequent review led USAC to find Eagle Hill ineligible for E-rate funding. Thus, USAC sought recovery of the \$77,430 it had disbursed to Eagle Hill for internal connections.<sup>12</sup> In its request for review, Eagle Hill states that it asked USAC whether E-rate program rules permitted discounts on internal connections for reaching dormitory rooms at its school, since its school serves children with learning disabilities and that structured study hall periods are held in the children’s dormitories for a minimum of two hours each night.<sup>13</sup> Eagle Hill explained to USAC that, because students are required to be in their rooms during those periods and the regular dormitory counselor supervisors are joined by paid teachers, the dormitory rooms should be treated as classrooms for purposes of funding under the E-rate program.<sup>14</sup> Eagle Hill further asserts that USAC informed Eagle Hill that Eagle Hill could argue that the dormitories are “acting” classrooms during the two hours per evening and, therefore, should be eligible for E-rate support.<sup>15</sup>

5. *Italian Home Request for Review*. During a routine Program Integrity Assurance review of Italian Home’s funding year 2007 request, USAC asked Italian Home what percentage of the dollars in

---

<sup>8</sup> *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; see also 47 C.F.R. § 54.506.

<sup>9</sup> *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*). The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. The term “Bureau” in this order refers to the Common Carrier Bureau prior to the change in 2002, and to the Wireline Competition Bureau after the change.

<sup>10</sup> *Id.* at 25612, para. 6. In addition, pursuant to the Commission’s guidance on permissible funding for internal connections, E-rate funding has been denied for a teachers’ center, despite its occasional use for student classroom instruction. See *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002).

<sup>11</sup> See Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (Feb. 9, 1999).

<sup>12</sup> See Eagle Hill COMAD Letter.

<sup>13</sup> See Email from EHSDevel@aol.com to Question@slcfund.org (dated Apr. 17, 1998).

<sup>14</sup> *Id.*

<sup>15</sup> See Email from Question@slcfund.org to EHSDevel@aol.com (dated Apr. 10, 1998). Specifically, the USAC employee directed Eagle Hill in the email to “indicate [its] unique situation as an attachment to” its FCC Form 471 application. *Id.* Based on the record, it does not appear that Eagle Hill provided such an attachment to its FCC Form 471.

its funding request were for telecommunications and Internet access services for dormitory or residence rooms.<sup>16</sup> When Italian Home replied that 81 percent was associated with its four residential programs and 19 percent was associated with its day school program,<sup>17</sup> USAC determined that the 81 percent associated with its residential programs was ineligible for E-rate program support and directed Italian Home to remove those expenses or explain why funding should be granted for those services.<sup>18</sup> Italian Home responded that the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, thus 100 percent of its services should be eligible for E-rate support.<sup>19</sup> USAC, however, only granted Italian Home discounts on the 19 percent of the purchases associated with its day school program.<sup>20</sup> In its request for review, Italian Home asserts that its student population consists of emotionally disturbed and learning disabled children ages five to twelve who require 24-hour per day care.<sup>21</sup> Italian Home acknowledges that it is primarily a residential facility and that the children in its four residential programs live in three separate buildings at two locations.<sup>22</sup> Italian Home again contends, as it did in its response to USAC, that, because the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, 100 percent of its services should be eligible for E-rate support.<sup>23</sup>

6. Rural Alaska Requests for Review. USAC denied Rural Alaska's funding year 2005 and 2006 requests for E-rate discounts for its Head Start, pre-kindergarten programs after finding that the state of Alaska did not define its elementary and secondary schools to include pre-kindergarten entities, such as the Head Start programs.<sup>24</sup> In its request for review, Rural Alaska argues that the early education provided through its Head Start program is a vital part of elementary education in Alaska.<sup>25</sup> It does not, however,

---

<sup>16</sup> Italian Home Request for Review, Attachment 3 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 11, 2007)). USAC performs a Program Integrity Assurance review to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, Program Integrity Assurance, <http://www.sl.universalservice.org/reference/6pia.asp> (last visited Oct. 20, 2009).

<sup>17</sup> Italian Home Request for Review, Attachment 4 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 11, 2007) (Italian Home June 11 Letter)).

<sup>18</sup> See Italian Home Request for Review, Attachment 5 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 12, 2007)).

<sup>19</sup> *Id.*, Attachment 6 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 12, 2007) (Italian Home June 12 Letter)).

<sup>20</sup> See Italian Home Funding Denial.

<sup>21</sup> See *id.*, Attachment 2 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 6, 2007)).

<sup>22</sup> *Id.*, Attachment 4 (Italian Home June 11 Letter).

<sup>23</sup> *Id.*, Attachment 6 (Italian Home June 12 Letter).

<sup>24</sup> See Rural Alaska Appeal Decisions at 2; see also USAC website, <http://www.usac.org/sl/applicants/step01/non-traditional-k-12/k-12-eligibility-table.aspx> (last visited Oct. 20, 2009).

<sup>25</sup> See Rural Alaska Requests for Review at 1.

address the specific issue of whether its programs, as determined by state law, are eligible for discounts under the E-rate program.<sup>26</sup>

### III. DISCUSSION

7. We deny the petitioners' requests for review and uphold USAC's decisions denying funding to these applicants because the locations at issue were ineligible for E-rate program support. As indicated above, consistent with the Commission's holdings with respect to internal connections funding, internal connections to student dormitory rooms have been found to be ineligible for E-rate support.<sup>27</sup> Thus, consistent with our precedent, we find that Eagle Hill's use of a dormitory room for tutoring for two hours a night does not qualify it to receive E-rate discounts for internal connections.<sup>28</sup> Similarly, Italian Home does not qualify for E-rate discounts for its residential facilities. Italian Home asserts that the Commonwealth of Massachusetts has held that its entire program is eligible for E-rate support.<sup>29</sup> Although Congress has delegated to the states discretion over which entities in the state provide primary or secondary education and are thus eligible to apply for support under the E-rate program,<sup>30</sup> the determination of which locations within a facility – classrooms or non-classroom locations – are eligible for support falls under the authority of the Commission.<sup>31</sup> Thus, as discussed above, we find that the provision of discounted services for residential facilities is inconsistent with the Commission's E-rate rules.<sup>32</sup> Accordingly, we deny Eagle Hill's and Italian Home's requests for review.

8. Rural Alaska misunderstands the criteria for eligibility, as explained above.<sup>33</sup> Although Rural Alaska asserts that early education provided by the Head Start program is a vital part of elementary education in Alaska, Head Start programs are only eligible in Alaska if the state defines elementary education to include these programs.<sup>34</sup> In its appeal decisions, USAC correctly observed that Alaska did not define elementary education to include Head Start programs.<sup>35</sup> Therefore, we affirm USAC's decision to deny E-rate program funding to Rural Alaska.

---

<sup>26</sup> See *supra* para. 2.

<sup>27</sup> See *supra* para. 3.

<sup>28</sup> We note that the Commission has previously concluded that "in certain limited instances, the use of telecommunications services offsite would . . . be integral, intermediate, and proximate to the education of students . . . and thus, would be considered to be an educational purpose." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208-09, paras. 17-19 (2003). We find, however, that providing service to dormitories in the manner described here is not one of those exceptional cases.

<sup>29</sup> See *supra* para. 5.

<sup>30</sup> See *supra* note 5.

<sup>31</sup> See, e.g., *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd. at 5440, para. 209 (concerning the eligibility of non-instructional buildings).

<sup>32</sup> See *supra* para. 3.

<sup>33</sup> See *supra* para. 2.

<sup>34</sup> *Id.*

<sup>35</sup> See Rural Alaska Appeal Decisions.

**IV. ORDERING CLAUSES**

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by Eagle Hill School, Italian Home for Children, and Rural Alaska Community Action Program, Inc. ARE DENIED.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

# **EXHIBIT 3**

## Donna Salvidio

---

**From:** SLD Problem Resolution Mailbox [sld-problem-resolution@vangent.com]  
**Sent:** Tuesday, May 03, 2011 3:39 PM  
**To:** Donna Salvidio  
**Subject:** RE: Attention: Megan/Case #22-222928  
**Attachments:** image001.jpg

**Donna,**

As it states in paragraph 5 of the Demand for Payment letter the funds are to be recovered the service provider.

Thank you,

Megan Allred

---

**From:** Donna Salvidio [mailto:dsalvidio@fletchertilton.com]  
**Sent:** Tuesday, May 03, 2011 1:51 PM  
**To:** SLD Problem Resolution Mailbox  
**Cc:** 'PJ McDonald'; 'Gene Labonte'; 'Lisa Gaskill'  
**Subject:** Attention: Megan/Case #22-222928

Dear Megan:

It was a pleasure speaking with you this afternoon concerning the above matter. As I mentioned, I represent the Form 471 applicant, Eagle Hill School, concerning its application number 84941.

It is not clear to me that the USAC has adjudicated BOTH the applicant and the service provider responsible for a Program rule violation. The attached documentation, while somewhat confusing, appears to show that the USAC is seeking to recover the funds solely from the Service Provider, Drahtaus Residential Networking, Inc. I am requesting clarification from the USAC as to the party or parties it deems responsible for the debt.

I have attached the Demand Payment Letter with the Funding Commitment Adjustment Report attached thereto. The last sentence of the third paragraph of the Demand Payment Letter states as follows: "If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report" (emphasis added). The Funding Commitment Adjustment Report shows that the funds are to be recovered from the Service Provider. There is nothing therein to indicate that the applicant is responsible for the repayment of the funds.

In addition to the Demand Payment Letter, I have attached a copy of the Commitment Adjustment Letter dated January 5, 2001. Again, this letter appears to state that the funds are being sought from the Service Provider, not the applicant. Paragraph 4 of the letter states: "If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future . . . ."

In response to the Commitment Adjustment Letter, the applicant filed a request for review. That request was denied pursuant to the attached FCC Order dated October 20, 2009.

Finally, I have attached a copy of the Sixth Report and Order issued by the FCC on September 28, 2010.



I would appreciate your assistance in clarifying whether the debt is the responsibility of both the applicant and the service provider, of solely the service provider. Again, my reading of the documentation leads me to believe that only the service provider is responsible for repayment.

I look forward to hearing from you. If you require additional information in order to make a determination, please feel free to contact me.

Regards,

Donna

\*\*\*\*\*

Donna Toman Salvidio, Esq.  
Fletcher Tilton PC  
The Guaranty Building  
370 Main Street, Suite 1100  
Worcester, MA 01608

Direct telephone: 508-459-8072  
Direct fax: 508-459-8372  
email: [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)  
[www.FletcherTilton.com](http://www.FletcherTilton.com)

**Fletcher Tilton** PC  
Attorneys at law

**The Guaranty Building**  
370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**  
161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**  
171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500  
FAX 508.459.8300

To the extent that this communication contains any federal tax-related advice, please be advised that such advice is not intended to be used, and may not be used, for the purpose of: (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein. Fletcher Tilton PC is required to inform you that only formal written opinion letters, meeting the guidelines of the IRS Circular 230, may be relied upon for such purposes. This e-mail message is generated from the law firm of Fletcher Tilton PC, and may contain information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this e-mail information is prohibited. If you have received this e-mail in error, please notify the sender by return e-mail and delete it from your computer system.

# **EXHIBIT 4**

## Donna Salvidio

---

**From:** Budilowsky, Susan [SBUDILO@sl.universalservice.org]  
**Sent:** Friday, May 13, 2011 2:20 PM  
**To:** Donna Salvidio  
**Subject:** FW: Request regarding FY1998 Form 471 #84941  
**Attachments:** 84941 Request.pdf

Donna T. Salvidio:

In regard to the attached documentation, I can confirm that the Demand Payment Letter request for FRN 85128 for FY1998 Form 471 #84941 is the sole responsibility of the Service Provider. No repayment is required of the Applicant.

Thank you,

Susan Budilowsky  
Manager, Escalations and Support  
[sbudilo@sl.universalservice.org](mailto:sbudilo@sl.universalservice.org)  
973-581-5140

---

**Confidentiality Notice:** The information in this e-mail and any attachments thereto is intended for the named recipient(s) only. This e-mail, including any attachments, may contain information that is privileged and confidential and subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action or inaction in reliance on the contents of this e-mail and any of its attachments is **STRICTLY PROHIBITED**. If you have received this e-mail in error, please immediately notify the sender via return e-mail; delete this e-mail and all attachments from your e-mail system and your computer system and network; and destroy any paper copies you may have in your possession. Thank you for your cooperation.

**Fletcher Tilton<sub>PC</sub>**  
Attorneys at law

MAY 9 2011 AM 11:44

**The Guaranty Building**

370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**

161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**

171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500  
FAX 508.459.8300

**FletcherTilton.com**

May 4, 2011

Via Certified Mail, Return Receipt Requested

USAC

Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road  
P.O. Box 902  
Whippany, NJ 07981

RE: SPIN: 143008855  
Service Provider Name: Drahthaus Residential Networking, Inc.  
Form 471 Application No.: 84941  
Funding Year: 1998  
FCC Registration No.: 0012462552  
Applicant Name: Eagle Hill School

Dear Sir or Madam:

This office represents the above-named Form 471 applicant, Eagle Hill School (the "Applicant"). The purpose of this letter is to confirm certain communications I had on May 3, 2011 with Megan Allred on behalf of USAC.

The Applicant contacted my office after receiving a copy of a Demand Payment Letter from USAC dated April 5, 2011 (the "Demand Payment Letter") and addressed to Drahthaus Residential Networking, Inc. (the "Service Provider"). The letter and attached Funding Commitment Adjustment Report appeared to state that the Service Provider was responsible for repayment of the debt, however some ambiguous language in the letter caused the Applicant to question whether USAC intended to hold both the Service Provider and the Applicant responsible for repayment of the funds.

After reviewing the Demand Payment Letter and other related materials, I called USAC at the 1-888-203-8100 number set forth in the letter. I spoke with Megan Allred and requested clarification of USAC's position with respect to the Applicant's responsibility for the debt. Ms. Allred asked that I send the relevant documents, including the Demand Payment Letter, for her review. Enclosed is a copy of my email to Ms. Allred, along with hard copies of the documents that I transmitted to her electronically. Our exchange was assigned case number 22-222928 by USAC.

{Client Files\26284\0001\00790516.DOCX }

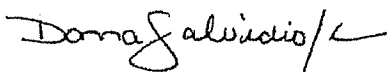
**FletcherTilton**<sub>PC</sub>  
Attorneys at law

USAC  
May 4, 2011  
Page 2

Ms. Allred called me after having reviewed the documents and informed me definitively that USAC is seeking repayment solely from the Service Provider. She further stated that USAC would take no collection action against the Applicant and that the non-payment of the debt by the Service Provider would not adversely affect the Applicant's "Green Light" status with the FCC. A copy of Ms. Allred's confirming email is also enclosed.

Consequently, I write this letter for the purpose of confirming the USAC's final determination that the debt that is the subject of the Demand Payment Letter is the sole responsibility of the Service Provider. In other words, the Applicant is not responsible for the repayment of all or any part of the debt. If this is not an accurate statement of the USAC's position with respect to this obligation, please contact the undersigned as soon as possible. Thank you.

Very truly yours,



Donna T. Salvidio

*Direct Telephone:* (508) 459-8072  
*Direct Facsimile:* (508) 459-8372  
*E-mail:* [dsalvidio@fletcherilton.com](mailto:dsalvidio@fletcherilton.com)

Encs.

cc: PJ McDonald, Headmaster  
Eagle Hill School

Eugene E. LaBonte, Jr., CFO  
Eagle Hill School

Lisa Gaskill, Technology Director  
Eagle Hill School



Demand Payment Letter  
(Funding Year 1998: July 1, 1998 - June 30, 1999)

April 5, 2011

Brian Riach  
Drahthaus Residential Networking, Inc.  
24 Hilltop Avenue  
Jefferson, MA 01522

Re: SPIN:	143008855
Service Provider Name:	Drahthaus Residential Networking, Inc.
Form 471 Application Number:	84941
Funding Year:	1998
FCC Registration Number:	0012462552
Applicant Name:	EAGLE HILL SCHOOL
Billed Entity Number:	90
Applicant Contact Person:	CHRIS HYNES
Payment Due By:	May 5, 2011

On January 5, 2001, you were sent a Notification of Commitment Adjustment Letter informing you of the need to recover funds from you for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the Notification of Commitment Adjustment Letter. A copy of that Report is also attached to this letter.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with the applicant to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that

the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full Funds to be "Recovered from Service Provider" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS), please send check payments to:

Bank of America  
c/o Universal Service Administrative Company (105056)  
1075 Loop Road  
Atlanta, GA 30337  
Phone 404-209-6377

If you are located in the Atlanta area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company  
P.O. Box 105056  
Atlanta, GA 30348-5056  
Phone 404-209-6377

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter. Complete Program information is posted to the SLD section of the USAC website at [www.usac.org/sl/](http://www.usac.org/sl/). You may also contact the SLD Client Service Bureau by email using the "Submit a Question" link on the SLD website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company  
Schools and Libraries Division

cc: CHRIS HYNES  
EAGLE HILL SCHOOL

Lisa Gaskil  
EAGLE HILL SCHOOL

Funding Commitment Adjustment Report  
for Form 471 Application Number: 84941

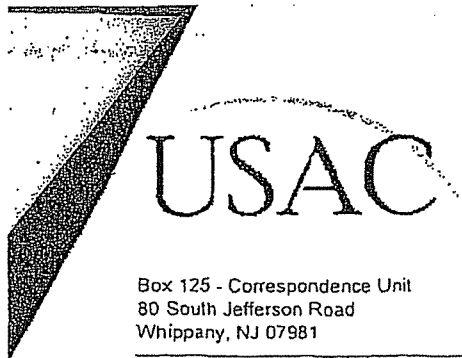
Funding Request Number:	85128
Contract Number:	I
Services Ordered:	INTERNAL CONNECTIONS
Billing Account Number:	
Original Funding Commitment:	\$519,779.70
Commitment Adjustment Amount:	\$161,146.82
Adjusted Funding Commitment:	\$358,632.88
Funds Disbursed to Date:	\$436,062.43
Funds to be Recovered from Service Provider:	\$77,429.55

Funding Commitment Adjustment Explanation:

The Federal Communications Commission (FCC) denied your appeal of FCC Form 471 application(84941) in the FCC Order DA 09-2244 released on October 29, 2009. Since your appeal was denied, USAC must continue recovery of improperly disbursed funds for the locations that were not eligible to receive service.

PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING





Universal Service Administrative Company  
Schools & Libraries Division

Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

---

COMMITMENT ADJUSTMENT LETTER

January 5, 2001

CHRIS HYNES  
EAGLE HILL SCHOOL  
242 OLD PETERSHAM ROAD, P.O. BOX 116.  
HARDWICK MA 01037 -

Re: COMMITMENT ADJUSTMENT

Funding Year: 1998-1999

Form 471 Application Number: 84941

Dear Applicant:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules. We have previously informed you that some or all of the funds committed to you were done so in error.

In order to be sure that no funds are used in violation of program rules, SLID must now adjust your overall funding commitments. The purpose of this letter is to make the adjustments to your funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from your application for which adjustments are necessary. The SLID is also sending this information to your service provider(s), so preparations can be made to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to you. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

## TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and RECEIVED BY THE SLD at the address below WITHIN 30 DAYS OF THE DATE AT THE TOP OF THIS LETTER. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter.
3. Identify the particular Funding Request Number (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an original authorized signature on your letter of appeal.

Please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Appeals submitted by fax, phone call, and e-mail CANNOT be processed. While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC) so that it is received within 30 days of the date on this letter. You may send your notice of appeal to: FCC, Office of the Secretary, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal.

Further information regarding filing an appeal directly with the FCC can be found in the "How to Apply, Step-by-Step" area of the SLD web site at [www.sl.universalservice.org](http://www.sl.universalservice.org).

## A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to Applicants and Service Providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number: 84941

Funding Request Number: 85128      SPIN: 143008855  
Service Provider: Drahthaus Residential Networking, Inc.  
Contract Number: I  
Services Ordered: INTERNAL CONNECTIONS  
Site Identifier: 90      EAGLE HILL SCHOOL  
Billing Account Number:  
Adjusted Funding Commitment: \$358,632.88  
Funds Disbursed to Date: \$436,062.43  
Funds to be Recovered: \$77,429.55  
Funding Commitment Adjustment Explanation:  
Commitment has been reduced to remove ineligible locations.

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of the	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Eagle Hill School	)	File No. SLD-84941
Hardwick, Massachusetts	)	
	)	
Italian Home for Children	)	File No. SLD-558248
Jamaica Plain, Massachusetts	)	
	)	
Rural Alaska Community Action Program, Inc.	)	File Nos. SLD-451855, 501948
Anchorage, Alaska	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ORDER

Adopted: October 20, 2009

Released: October 20, 2009

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order we deny requests for review filed by Eagle Hill School (Eagle Hill), Italian Home for Children (Italian Home), and Rural Alaska Community Action Program (Rural Alaska) of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program).<sup>1</sup> We uphold USAC's decisions

---

<sup>1</sup> In this order we use the term "appeal" generically to refer to requests for review of decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). See Letter from Margaret Hurley, on behalf of Eagle Hill School, to Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 18, 2001) (Eagle Hill Request for Review); Letter from Ross Wheadon, on behalf of Italian Home for Children, to Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 5, 2007) (Italian Home Request for Review); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed July 13, 2006); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 12, 2006) (collectively, Rural Alaska Requests for Review).

denying funding to these applicants because the locations at issue were ineligible for support under the E-rate program.<sup>2</sup>

## II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> Only eligible applicants may seek support for eligible services.<sup>4</sup> When USAC reviews an application and identifies an ineligible entity seeking support, it will deny funding for the requested service. Congress defined the scope of entities eligible for support as elementary and secondary schools, as defined by the Elementary and Secondary Education Act of 1965,<sup>5</sup> and as libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).<sup>6</sup> Both definitions rely on the standards set by each individual state.

3. Some internal connections within an eligible school or library may not be eligible for E-rate support. In the *Universal Service First Report and Order*, the Commission stated that “a given service is eligible for support as a component of the institution’s internal connections only if it is necessary to transport information all the way to individual classrooms.”<sup>7</sup> The Commission elaborated on this policy in

---

<sup>2</sup> Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (dated Jan. 5, 2001) (Eagle Hill Commitment Adjustment (COMAD) Letter); Letter from USAC, Schools and Libraries Division, to Ross Wheadon, Italian Home for Children (dated Sept. 11, 2007) (Italian Home Funding Denial); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated May 10, 2006); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated Oct. 16, 2006) (collectively, Rural Alaska Appeal Decisions).

<sup>3</sup> 47 C.F.R. §§ 54.501-503.

<sup>4</sup> See 47 C.F.R. § 54.501(b)-(d); USAC website, Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at 3-4 (FCC Form 471 Instructions) (explaining that only schools and libraries meeting statutory eligibility standards may apply for support for eligible services), [http://www.universalservice.org/res/documents/sl/pdf/471\\_fy05.pdf](http://www.universalservice.org/res/documents/sl/pdf/471_fy05.pdf) (last visited Oct. 20, 2009).

<sup>5</sup> See 47 U.S.C. § 254(h)(7)(A). The definitions of elementary and secondary schools are the definitions of those terms created by each individual state. 20 U.S.C. § 7801(18), (38). Specifically, the term “elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that the term does not include any education beyond grade 12. 20 U.S.C. § 7801(20), (38). In addition, the statute excludes schools that have endowments of more than \$50 million or operate for profit. See 47 U.S.C. § 254(h)(4).

<sup>6</sup> See 47 U.S.C. § 254(h)(4). In addition, the library must have funding independent from any school, and may not operate as a for-profit business. 47 C.F.R. § 54.501(c). The LSTA states that a “library” may include a “private library or other special library, but only if the State ... determines that the library should be considered a library for the purposes” of the LSTA. 20 U.S.C. § 9122(1)(E).

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9017-18, 9021 at para. 459 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); see also *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is “not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings . . .”<sup>8</sup> Consistent with these orders, internal connections to dormitory rooms have been found to be ineligible for support under the E-rate program.<sup>9</sup> Specifically, in the *Anderson School Order* the Bureau stated that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms.<sup>10</sup>

4. *Eagle Hill Request for Review.* Although USAC initially approved Eagle Hill’s funding year 1998 request for internal connections to individual student dormitory rooms,<sup>11</sup> a subsequent review led USAC to find Eagle Hill ineligible for E-rate funding. Thus, USAC sought recovery of the \$77,430 it had disbursed to Eagle Hill for internal connections.<sup>12</sup> In its request for review, Eagle Hill states that it asked USAC whether E-rate program rules permitted discounts on internal connections for reaching dormitory rooms at its school, since its school serves children with learning disabilities and that structured study hall periods are held in the children’s dormitories for a minimum of two hours each night.<sup>13</sup> Eagle Hill explained to USAC that, because students are required to be in their rooms during those periods and the regular dormitory counselor supervisors are joined by paid teachers, the dormitory rooms should be treated as classrooms for purposes of funding under the E-rate program.<sup>14</sup> Eagle Hill further asserts that USAC informed Eagle Hill that Eagle Hill could argue that the dormitories are “acting” classrooms during the two hours per evening and, therefore, should be eligible for E-rate support.<sup>15</sup>

5. *Italian Home Request for Review.* During a routine Program Integrity Assurance review of Italian Home’s funding year 2007 request, USAC asked Italian Home what percentage of the dollars in

<sup>8</sup> *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; see also 47 C.F.R. § 54.506.

<sup>9</sup> *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*). The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. The term “Bureau” in this order refers to the Common Carrier Bureau prior to the change in 2002, and to the Wireline Competition Bureau after the change.

<sup>10</sup> *Id.* at 25612, para. 6. In addition, pursuant to the Commission’s guidance on permissible funding for internal connections, E-rate funding has been denied for a teachers’ center, despite its occasional use for student classroom instruction. See *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002).

<sup>11</sup> See Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (Feb. 9, 1999).

<sup>12</sup> See Eagle Hill COMAD Letter.

<sup>13</sup> See Email from EHSDevel@aol.com to Question@slcfund.org (dated Apr. 17, 1998).

<sup>14</sup> *Id.*

<sup>15</sup> See Email from Question@slcfund.org to EHSDevel@aol.com (dated Apr. 10, 1998). Specifically, the USAC employee directed Eagle Hill in the email to “indicate [its] unique situation as an attachment to” its FCC Form 471 application. *Id.* Based on the record, it does not appear that Eagle Hill provided such an attachment to its FCC Form 471.

its funding request were for telecommunications and Internet access services for dormitory or residence rooms.<sup>16</sup> When Italian Home replied that 81 percent was associated with its four residential programs and 19 percent was associated with its day school program,<sup>17</sup> USAC determined that the 81 percent associated with its residential programs was ineligible for E-rate program support and directed Italian Home to remove those expenses or explain why funding should be granted for those services.<sup>18</sup> Italian Home responded that the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, thus 100 percent of its services should be eligible for E-rate support.<sup>19</sup> USAC, however, only granted Italian Home discounts on the 19 percent of the purchases associated with its day school program.<sup>20</sup> In its request for review, Italian Home asserts that its student population consists of emotionally disturbed and learning disabled children ages five to twelve who require 24-hour per day care.<sup>21</sup> Italian Home acknowledges that it is primarily a residential facility and that the children in its four residential programs live in three separate buildings at two locations.<sup>22</sup> Italian Home again contends, as it did in its response to USAC, that, because the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, 100 percent of its services should be eligible for E-rate support.<sup>23</sup>

6. Rural Alaska Requests for Review. USAC denied Rural Alaska's funding year 2005 and 2006 requests for E-rate discounts for its Head Start, pre-kindergarten programs after finding that the state of Alaska did not define its elementary and secondary schools to include pre-kindergarten entities, such as the Head Start programs.<sup>24</sup> In its request for review, Rural Alaska argues that the early education provided through its Head Start program is a vital part of elementary education in Alaska.<sup>25</sup> It does not, however,

---

<sup>16</sup> Italian Home Request for Review, Attachment 3 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 11, 2007)). USAC performs a Program Integrity Assurance review to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, Program Integrity Assurance, <http://www.sl.universalservice.org/reference/6pia.asp> (last visited Oct. 20, 2009).

<sup>17</sup> Italian Home Request for Review, Attachment 4 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 11, 2007) (Italian Home June 11 Letter)).

<sup>18</sup> See Italian Home Request for Review, Attachment 5 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 12, 2007)).

<sup>19</sup> *Id.*, Attachment 6 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 12, 2007) (Italian Home June 12 Letter)).

<sup>20</sup> See Italian Home Funding Denial.

<sup>21</sup> See *id.*, Attachment 2 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 6, 2007)).

<sup>22</sup> *Id.*, Attachment 4 (Italian Home June 11 Letter).

<sup>23</sup> *Id.*, Attachment 6 (Italian Home June 12 Letter).

<sup>24</sup> See Rural Alaska Appeal Decisions at 2; see also USAC website, <http://www.usac.org/sl/applicants/step01/non-traditional-k-12/k-12-eligibility-table.aspx> (last visited Oct. 20, 2009).

<sup>25</sup> See Rural Alaska Requests for Review at 1.



address the specific issue of whether its programs, as determined by state law, are eligible for discounts under the E-rate program.<sup>26</sup>

### III. DISCUSSION

7. We deny the petitioners' requests for review and uphold USAC's decisions denying funding to these applicants because the locations at issue were ineligible for E-rate program support. As indicated above, consistent with the Commission's holdings with respect to internal connections funding, internal connections to student dormitory rooms have been found to be ineligible for E-rate support.<sup>27</sup> Thus, consistent with our precedent, we find that Eagle Hill's use of a dormitory room for tutoring for two hours a night does not qualify it to receive E-rate discounts for internal connections.<sup>28</sup> Similarly, Italian Home does not qualify for E-rate discounts for its residential facilities. Italian Home asserts that the Commonwealth of Massachusetts has held that its entire program is eligible for E-rate support.<sup>29</sup> Although Congress has delegated to the states discretion over which entities in the state provide primary or secondary education and are thus eligible to apply for support under the E-rate program,<sup>30</sup> the determination of which locations within a facility – classrooms or non-classroom locations – are eligible for support falls under the authority of the Commission.<sup>31</sup> Thus, as discussed above, we find that the provision of discounted services for residential facilities is inconsistent with the Commission's E-rate rules.<sup>32</sup> Accordingly, we deny Eagle Hill's and Italian Home's requests for review.

8. Rural Alaska misunderstands the criteria for eligibility, as explained above.<sup>33</sup> Although Rural Alaska asserts that early education provided by the Head Start program is a vital part of elementary education in Alaska, Head Start programs are only eligible in Alaska if the state defines elementary education to include these programs.<sup>34</sup> In its appeal decisions, USAC correctly observed that Alaska did not define elementary education to include Head Start programs.<sup>35</sup> Therefore, we affirm USAC's decision to deny E-rate program funding to Rural Alaska.

---

<sup>26</sup> See *supra* para. 2.

<sup>27</sup> See *supra* para. 3.

<sup>28</sup> We note that the Commission has previously concluded that "in certain limited instances, the use of telecommunications services offsite would . . . be integral, intermediate, and proximate to the education of students . . . and thus, would be considered to be an educational purpose." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208-09, paras. 17-19 (2003). We find, however, that providing service to dormitories in the manner described here is not one of those exceptional cases.

<sup>29</sup> See *supra* para. 5.

<sup>30</sup> See *supra* note 5.

<sup>31</sup> See, e.g., *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd. at 5440, para. 209 (concerning the eligibility of non-instructional buildings).

<sup>32</sup> See *supra* para. 3.

<sup>33</sup> See *supra* para. 2.

<sup>34</sup> *Id.*

<sup>35</sup> See Rural Alaska Appeal Decisions.

**IV. ORDERING CLAUSES**

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by Eagle Hill School, Italian Home for Children, and Rural Alaska Community Action Program, Inc. ARE DENIED.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## **Donna Salvidio**

---

**From:** SLD Problem Resolution Mailbox [sld-problem-resolution@vangent.com]  
**Sent:** Tuesday, May 03, 2011 3:39 PM  
**To:** Donna Salvidio  
**Subject:** RE: Attention: Megan/Case #22-222928  
**Attachments:** image001.jpg

**Donna,**

As it states in paragraph 5 of the Demand for Payment letter the funds are to be recovered the service provider.

Thank you,

Megan Allred

---

**From:** Donna Salvidio [mailto:dsalvidio@fletcherilton.com]  
**Sent:** Tuesday, May 03, 2011 1:51 PM  
**To:** SLD Problem Resolution Mailbox  
**Cc:** 'PJ McDonald'; 'Gene Labonte'; 'Lisa Gaskill'  
**Subject:** Attention: Megan/Case #22-222928

Dear Megan:

It was a pleasure speaking with you this afternoon concerning the above matter. As I mentioned, I represent the Form 471 applicant, Eagle Hill School, concerning its application number 84941.

It is not clear to me that the USAC has adjudicated BOTH the applicant and the service provider responsible for a Program rule violation. The attached documentation, while somewhat confusing, appears to show that the USAC is seeking to recover the funds solely from the Service Provider, Drahthaus Residential Networking, Inc. I am requesting clarification from the USAC as to the party or parties it deems responsible for the debt.

I have attached the Demand Payment Letter with the Funding Commitment Adjustment Report attached thereto. The last sentence of the third paragraph of the Demand Payment Letter states as follows: "If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report" (emphasis added). The Funding Commitment Adjustment Report shows that the funds are to be recovered from the Service Provider. There is nothing therein to indicate that the applicant is responsible for the repayment of the funds.

In addition to the Demand Payment Letter, I have attached a copy of the Commitment Adjustment Letter dated January 5, 2001. Again, this letter appears to state that the funds are being sought from the Service Provider, not the applicant. Paragraph 4 of the letter states: "If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future . . . ."

In response to the Commitment Adjustment Letter, the applicant filed a request for review. That request was denied pursuant to the attached FCC Order dated October 20, 2009.

Finally, I have attached a copy of the Sixth Report and Order issued by the FCC on September 28, 2010.

I would appreciate your assistance in clarifying whether the debt is the responsibility of both the applicant and the service provider, of solely the service provider. Again, my reading of the documentation leads me to believe that only the service provider is responsible for repayment.

I look forward to hearing from you. If you require additional information in order to make a determination, please feel free to contact me.

Regards,

Donna

\*\*\*\*\*

Donna Toman Salvidio, Esq.  
Fletcher Tilton PC  
The Guaranty Building  
370 Main Street, Suite 1100  
Worcester, MA 01608

Direct telephone: 508-459-8072  
Direct fax: 508-459-8372  
email: [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)  
[www.FletcherTilton.com](http://www.FletcherTilton.com)

**Fletcher Tilton** PC  
Attorneys at law

**The Guaranty Building**  
370 Main Street, 12th Floor  
Worcester, MA 01608-1729  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**  
161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**  
171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500  
FAX 508.459.8300

To the extent that this communication contains any federal tax-related advice, please be advised that such advice is not intended to be used, and may not be used, for the purpose of: (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein. Fletcher Tilton PC is required to inform you that only formal written opinion letters, meeting the guidelines of the IRS Circular 230, may be relied upon for such purposes. This e-mail message is generated from the law firm of Fletcher Tilton PC, and may contain information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this e-mail information is prohibited. If you have received this e-mail in error, please notify the sender by return e-mail and delete it from your computer system.

Donna Salvidio

---

From: Donna Salvidio  
Sent: Tuesday, May 03, 2011 2:51 PM  
To: 'sld-problem-resolution@vangent.com'  
Cc: 'PJ McDonald'; 'Gene Labonte'; 'Lisa Gaskill'  
Subject: Attention: Megan/Case #22-222928  
Attachments: USAC Demand Payment Ltr. to Drahthaus 4.5.11 (00790199).PDF; Commitment Adjustment Ltr. USAC to EHS 1.5.10 (00790194).PDF; FCC 6th Report and Order 9.28.10 (00790204).PDF; FCC Order denying EHS request for review 10.20.2009 (00790201).PDF; image001.jpg

Dear Megan:

It was a pleasure speaking with you this afternoon concerning the above matter. As I mentioned, I represent the Form 471 applicant, Eagle Hill School, concerning its application number 84941.

It is not clear to me that the USAC has adjudicated BOTH the applicant and the service provider responsible for a Program rule violation. The attached documentation, while somewhat confusing, appears to show that the USAC is seeking to recover the funds solely from the Service Provider, Drahthaus Residential Networking, Inc. I am requesting clarification from the USAC as to the party or parties it deems responsible for the debt.

I have attached the Demand Payment Letter with the Funding Commitment Adjustment Report attached thereto. The last sentence of the third paragraph of the Demand Payment Letter states as follows: "If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report" (emphasis added). The Funding Commitment Adjustment Report shows that the funds are to be recovered from the Service Provider. There is nothing therein to indicate that the applicant is responsible for the repayment of the funds.

In addition to the Demand Payment Letter, I have attached a copy of the Commitment Adjustment Letter dated January 5, 2001. Again, this letter appears to state that the funds are being sought from the Service Provider, not the applicant. Paragraph 4 of the letter states: "If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future . . . ."

In response to the Commitment Adjustment Letter, the applicant filed a request for review. That request was denied pursuant to the attached FCC Order dated October 20, 2009.

Finally, I have attached a copy of the Sixth Report and Order issued by the FCC on September 28, 2010.

I would appreciate your assistance in clarifying whether the debt is the responsibility of both the applicant and the service provider, or solely the service provider. Again, my reading of the documentation leads me to believe that only the service provider is responsible for repayment.

I look forward to hearing from you. If you require additional information in order to make a determination, please feel free to contact me.

Regards,

Donna

\*\*\*\*\*

Donna Toman Salvidio, Esq.  
Fletcher Tilton PC  
The Guaranty Building  
370 Main Street, Suite 1100  
Worcester, MA 01608

Direct telephone: 508-459-8072  
Direct fax: 508-459-8372  
email: [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)  
[www.FletcherTilton.com](http://www.FletcherTilton.com)

**Fletcher Tilton** PC  
Attorneys at law

**The Guaranty Building**  
370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**  
161 Worcester Road, Suite 501  
Frammingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**  
171 Main Street  
Hyannis, MA 026  
TEL 508.815.2500  
FAX 508.459.8300

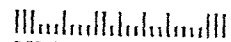
Fletcher Tilton PC

The Guaranty Building  
370 Main Street, 12th Floor  
Worcester, MA 01608-1779



7196 9008 9111 0752 9908

RETURN RECEIPT REQUESTED



USAC

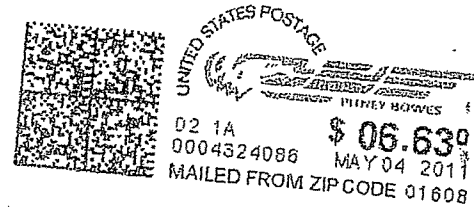
Schools and Libraries Division -

Correspondence Unit

100 South Jefferson Road

P.O. Box 902

Whippany, NJ 07981



4/7

# EXHIBIT 5





### Administrator's Decision on Appeal - Funding Year 1998 - 1999

October 26, 2011

Donna T. Salvidio  
Fletcher Tilton  
370 Main Street, 12<sup>th</sup> Floor  
Worcester, MA 01608-1779

Re: Applicant Name: Eagle Hill School  
Billed Entity Number: 90  
Form 471 Application Number: 84941  
Funding Request Number(s): 85128  
Your Correspondence Dated: September 26, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 85128  
Decision on Appeal: **Denied**  
Explanation:

- Upon thorough review of the appeal letter and the relevant documentation, USAC has determined that recovery for the improperly disbursed funds will continue to be sought from Eagle Hill School (Eagle Hill), BEN 90. In a Commitment Adjustment Letter dated January 5, 2001, USAC informed Eagle Hill and its service provider, Drahthaus Residential Networking, Inc. (SPIN 143008855) that funds were erroneously committed to ineligible entities and that the funding commitment for FRN 85128 was adjusted to remove the cost associated with those entities. On March 25, 2001, USAC issued the 1st Demand Payment Letter, seeking recovery of any improperly disbursed funds from the service provider, Drahthaus Residential Networking, Inc. (SPIN 143008855). Eagle Hill appealed Commitment Adjustment Decision to USAC in February 2001 and to the FCC in April 2001. During FCC's review of Eagle Hill's appeal, USAC recovery action was placed on hold pending FCC decision on the underlying issue. In the DA 09-2244 issued

on October 20, 2009, the FCC upheld USAC's denial of Eagle Hill's appeal and its decision to adjust the commitment for FRN 85128 and sought recovery of funds improperly disbursed to ineligible dormitories. Per the FCC's Fourth Report and Order (FCC 04-181, rel. 10/17/2004), the FCC ruled that USAC should direct recovery actions to the party or parties that committed the rule or statutory violation in question. The FCC directed USAC to make the determination, in the first instance, to whom recovery should be directed by considering which party was in a better position to prevent the statutory or rule violation in question. As a result of the FCC's denial of Eagle Hill's appeal and consistent with FCC 04-181, USAC re-issued a Commitment Adjustment Letter to Eagle Hill on August 23, 2011 and re-directed a recovery action toward the applicant as the party who failed to ensure compliance with program rules by including ineligible entities on its Block 4 of the Form 471 # 84941. USAC completed its recovery review and initiated recovery in 2001 which was within the five years of the last date to deliver services for FRN 85128. USAC's recovery actions were within the 5 year statutory limitation period. On appeal, you did not prove that USAC's decision was incorrect. Consequently, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

CC: Lisa Gaskill  
242 Old Petersham Rd  
P. O. Box 116  
Hardwick, MA 01037-0116

Schools and Libraries Division - Correspondence Unit  
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685  
Visit us online at: [www.usac.org/sl](http://www.usac.org/sl)

# **EXHIBIT 6**

## Donna Salvidio

---

**From:** SLD Problem Resolution Mailbox [sld-problem-resolution@vangent.com]  
**Sent:** Tuesday, May 03, 2011 3:39 PM  
**To:** Donna Salvidio  
**Subject:** RE: Attention: Megan/Case #22-222928  
**Attachments:** image001.jpg

Donna,

As it states in paragraph 5 of the Demand for Payment letter the funds are to be recovered the service provider.

Thank you,

Megan Allred

---

**From:** Donna Salvidio [mailto:dsalvidio@fletchertilton.com]  
**Sent:** Tuesday, May 03, 2011 1:51 PM  
**To:** SLD Problem Resolution Mailbox  
**Cc:** 'PJ McDonald'; 'Gene Labonte'; 'Lisa Gaskill'  
**Subject:** Attention: Megan/Case #22-222928

Dear Megan:

It was a pleasure speaking with you this afternoon concerning the above matter. As I mentioned, I represent the Form 471 applicant, Eagle Hill School, concerning its application number 84941.

It is not clear to me that the USAC has adjudicated BOTH the applicant and the service provider responsible for a Program rule violation. The attached documentation, while somewhat confusing, appears to show that the USAC is seeking to recover the funds solely from the Service Provider, Drahthaus Residential Networking, Inc. I am requesting clarification from the USAC as to the party or parties it deems responsible for the debt.

I have attached the Demand Payment Letter with the Funding Commitment Adjustment Report attached thereto. The last sentence of the third paragraph of the Demand Payment Letter states as follows: "If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report" (emphasis added). The Funding Commitment Adjustment Report shows that the funds are to be recovered from the Service Provider. There is nothing therein to indicate that the applicant is responsible for the repayment of the funds.

In addition to the Demand Payment Letter, I have attached a copy of the Commitment Adjustment Letter dated January 5, 2001. Again, this letter appears to state that the funds are being sought from the Service Provider, not the applicant. Paragraph 4 of the letter states: "If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future . . . ."

In response to the Commitment Adjustment Letter, the applicant filed a request for review. That request was denied pursuant to the attached FCC Order dated October 20, 2009.

Finally, I have attached a copy of the Sixth Report and Order issued by the FCC on September 28, 2010.

I would appreciate your assistance in clarifying whether the debt is the responsibility of both the applicant and the service provider, of solely the service provider. Again, my reading of the documentation leads me to believe that only the service provider is responsible for repayment.

I look forward to hearing from you. If you require additional information in order to make a determination, please feel free to contact me.

Regards,

Donna

\*\*\*\*\*

Donna Toman Salvidio, Esq.  
Fletcher Tilton PC  
The Guaranty Building  
370 Main Street, Suite 1100  
Worcester, MA 01608

Direct telephone: 508-459-8072  
Direct fax: 508-459-8372  
email: [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)  
[www.FletcherTilton.com](http://www.FletcherTilton.com)

**Fletcher Tilton**<sup>PC</sup>  
Attorneys at law

**The Guaranty Building**  
370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**  
161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**  
171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500  
FAX 508.459.8300

To the extent that this communication contains any federal tax-related advice, please be advised that such advice is not intended to be used, and may not be used, for the purpose of: (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein. Fletcher Tilton PC is required to inform you that only formal written opinion letters, meeting the guidelines of the IRS Circular 230, may be relied upon for such purposes. This e-mail message is generated from the law firm of Fletcher Tilton PC, and may contain information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this e-mail information is prohibited. If you have received this e-mail in error, please notify the sender by return e-mail and delete it from your computer system.

# **EXHIBIT 7**

## Donna Salvidio

---

**From:** Budilowsky, Susan [SBUDILO@sl.universalservice.org]  
**Sent:** Friday, May 13, 2011 2:20 PM  
**To:** Donna Salvidio  
**Subject:** FW: Request regarding FY1998 Form 471 #84941  
**Attachments:** 84941 Request.pdf

Donna T. Salvidio:

In regard to the attached documentation, I can confirm that the Demand Payment Letter request for FRN 85128 for FY1998 Form 471 #84941 is the sole responsibility of the Service Provider. No repayment is required of the Applicant.

Thank you,

Susan Budilowsky  
Manager, Escalations and Support  
[sbudilo@sl.universalservice.org](mailto:sbudilo@sl.universalservice.org)  
973-581-5140

---

**Confidentiality Notice:** The information in this e-mail and any attachments thereto is intended for the named recipient(s) only. This e-mail, including any attachments, may contain information that is privileged and confidential and subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action or inaction in reliance on the contents of this e-mail and any of its attachments is **STRICTLY PROHIBITED**. If you have received this e-mail in error, please immediately notify the sender via return e-mail; delete this e-mail and all attachments from your e-mail system and your computer system and network; and destroy any paper copies you may have in your possession. Thank you for your cooperation.



# FletcherTilton<sub>PC</sub>

Attorneys at law

## The Guaranty Building

370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

## The Meadows

161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

## Cape Cod

171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500  
FAX 508.459.8300

FletcherTilton.com

May 4, 2011

### Via Certified Mail, Return Receipt Requested

USAC

Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road  
P.O. Box 902  
Whippany, NJ 07981

RE: SPIN:	143008855
Service Provider Name:	Drahthaus Residential Networking, Inc.
Form 471 Application No.:	84941
Funding Year:	1998
FCC Registration No.:	0012462552
Applicant Name:	Eagle Hill School

Dear Sir or Madam:

This office represents the above-named Form 471 applicant, Eagle Hill School (the "Applicant"). The purpose of this letter is to confirm certain communications I had on May 3, 2011 with Megan Allred on behalf of USAC.

The Applicant contacted my office after receiving a copy of a Demand Payment Letter from USAC dated April 5, 2011 (the "Demand Payment Letter") and addressed to Drahthaus Residential Networking, Inc. (the "Service Provider"). The letter and attached Funding Commitment Adjustment Report appeared to state that the Service Provider was responsible for repayment of the debt, however some ambiguous language in the letter caused the Applicant to question whether USAC intended to hold both the Service Provider and the Applicant responsible for repayment of the funds.

After reviewing the Demand Payment Letter and other related materials, I called USAC at the 1-888-203-8100 number set forth in the letter. I spoke with Megan Allred and requested clarification of USAC's position with respect to the Applicant's responsibility for the debt. Ms. Allred asked that I send the relevant documents, including the Demand Payment Letter, for her review. Enclosed is a copy of my email to Ms. Allred, along with hard copies of the documents that I transmitted to her electronically. Our exchange was assigned case number 22-222928 by USAC.

{Client Files\26284\0001\00790516.DOCX }

MAY 9 2011 11:44

# FletcherTilton <sup>PC</sup>

Attorneys at law

USAC

May 4, 2011

Page 2

Ms. Allred called me after having reviewed the documents and informed me definitively that USAC is seeking repayment solely from the Service Provider. She further stated that USAC would take no collection action against the Applicant and that the non-payment of the debt by the Service Provider would not adversely affect the Applicant's "Green Light" status with the FCC. A copy of Ms. Allred's confirming email is also enclosed.

Consequently, I write this letter for the purpose of confirming the USAC's final determination that the debt that is the subject of the Demand Payment Letter is the sole responsibility of the Service Provider. In other words, the Applicant is not responsible for the repayment of all or any part of the debt. If this is not an accurate statement of the USAC's position with respect to this obligation, please contact the undersigned as soon as possible. Thank you.

Very truly yours,



Donna T. Salvidio

*Direct Telephone:* (508) 459-8072

*Direct Facsimile:* (508) 459-8372

*E-mail:* [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)

Encs.

cc: PJ McDonald, Headmaster  
Eagle Hill School

Eugene E. LaBonte, Jr., CFO  
Eagle Hill School

Lisa Gaskill, Technology Director  
Eagle Hill School



Demand Payment Letter  
(Funding Year 1998: July 1, 1998 - June 30, 1999)

April 5, 2011

Brian Riach  
Drahthaus Residential Networking, Inc.  
24 Hilltop Avenue  
Jefferson, MA 01522

Re: SPIN:	143008855
Service Provider Name:	Drahthaus Residential Networking, Inc.
Form 471 Application Number:	84941
Funding Year:	1998
FCC Registration Number:	0012462552
Applicant Name:	EAGLE HILL SCHOOL
Billed Entity Number:	90
Applicant Contact Person:	CHRIS HYNES
Payment Due By:	May 5, 2011

On January 5, 2001, you were sent a Notification of Commitment Adjustment Letter informing you of the need to recover funds from you for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the Notification of Commitment Adjustment Letter. A copy of that Report is also attached to this letter.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with the applicant to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that

the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full Funds to be "Recovered from Service Provider" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS), please send check payments to:

Bank of America  
c/o Universal Service Administrative Company (105056)  
1075 Loop Road  
Atlanta, GA 30337  
Phone 404-209-6377

If you are located in the Atlanta area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company  
P.O. Box 105056  
Atlanta, GA 30348-5056  
Phone 404-209-6377

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter. Complete Program information is posted to the SLD section of the USAC website at [www.usac.org/sl/](http://www.usac.org/sl/). You may also contact the SLD Client Service Bureau by email using the "Submit a Question" link on the SLD website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company  
Schools and Libraries Division

cc: CHRIS HYNES  
EAGLE HILL SCHOOL

Lisa Gaskil  
EAGLE HILL SCHOOL

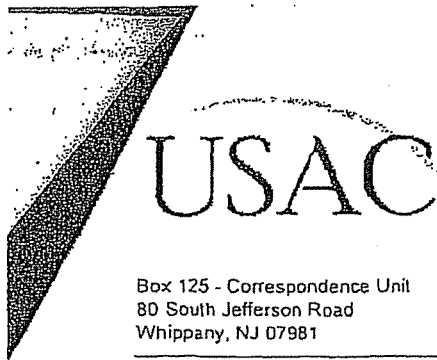
Funding Commitment Adjustment Report  
for Form 471 Application Number: 84941

Funding Request Number:	85128
Contract Number:	I
Services Ordered:	INTERNAL CONNECTIONS
Billing Account Number:	
Original Funding Commitment:	\$519,779.70
Commitment Adjustment Amount:	\$161,146.82
Adjusted Funding Commitment:	\$358,632.88
Funds Disbursed to Date:	\$436,062.43
Funds to be Recovered from Service Provider:	\$77,429.55

Funding Commitment Adjustment Explanation:

The Federal Communications Commission (FCC) denied your appeal of FCC Form 471 application(84941) in the FCC Order DA 09-2244 released on October 29, 2009. Since your appeal was denied, USAC must continue recovery of improperly disbursed funds for the locations that were not eligible to receive service.

PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING



Universal Service Administrative Company  
Schools & Libraries Division

Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

---

COMMITMENT ADJUSTMENT LETTER

January 5, 2001

CHRIS HYNES  
EAGLE HILL SCHOOL  
242 OLD PETERSHAM ROAD, P.O. BOX 116.  
HARDWICK MA 01037 -

Re: COMMITMENT ADJUSTMENT

Funding Year: 1998-1999

Form 471 Application Number: 84941

Dear Applicant:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules. We have previously informed you that some or all of the funds committed to you were done so in error.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust your overall funding commitments. The purpose of this letter is to make the adjustments to your funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from your application for which adjustments are necessary. The SLD is also sending this information to your service provider(s), so preparations can be made to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to you. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

## TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and RECEIVED BY THE SLD at the address below WITHIN 30 DAYS OF THE DATE AT THE TOP OF THIS LETTER. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter.
3. Identify the particular Funding Request Number (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an original authorized signature on your letter of appeal.

Please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Appeals submitted by fax, phone call, and e-mail CANNOT be processed. While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC) so that it is received within 30 days of the date on this letter. You may send your notice of appeal to: FCC, Office of the Secretary, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal.

Further information regarding filing an appeal directly with the FCC can be found in the "How to Apply, Step-by-Step" area of the SLD web site at [www.sl.universalservice.org](http://www.sl.universalservice.org).

## A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to Applicants and Service Providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.



Funding Commitment Report for Application Number: 84941

---

Funding Request Number: 85128 SPIN: 143008855

Service Provider: Drahthaus Residential Networking, Inc.

Contract Number: 1

Services Ordered: INTERNAL CONNECTIONS

Site Identifier: 90 EAGLE HILL SCHOOL

Billing Account Number:

Adjusted Funding Commitment: \$358,632.88

Funds Disbursed to Date: \$436,062.43

Funds to be Recovered: \$77,429.55

Funding Commitment Adjustment Explanation:

Commitment has been reduced to remove ineligible locations.

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of the	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Eagle Hill School	)	File No. SLD-84941
Hardwick, Massachusetts	)	
	)	
Italian Home for Children	)	File No. SLD-558248
Jamaica Plain, Massachusetts	)	
	)	
Rural Alaska Community Action Program, Inc.	)	File Nos. SLD-451855, 501948
Anchorage, Alaska	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ORDER

Adopted: October 20, 2009

Released: October 20, 2009

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order we deny requests for review filed by Eagle Hill School (Eagle Hill), Italian Home for Children (Italian Home), and Rural Alaska Community Action Program (Rural Alaska) of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program).<sup>1</sup> We uphold USAC's decisions

---

<sup>1</sup> In this order we use the term "appeal" generically to refer to requests for review of decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). See Letter from Margaret Hurley, on behalf of Eagle Hill School, to Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 18, 2001) (Eagle Hill Request for Review); Letter from Ross Wheadon, on behalf of Italian Home for Children, to Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 5, 2007) (Italian Home Request for Review); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed July 13, 2006); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 12, 2006) (collectively, Rural Alaska Requests for Review).

denying funding to these applicants because the locations at issue were ineligible for support under the E-rate program.<sup>2</sup>

## II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> Only eligible applicants may seek support for eligible services.<sup>4</sup> When USAC reviews an application and identifies an ineligible entity seeking support, it will deny funding for the requested service. Congress defined the scope of entities eligible for support as elementary and secondary schools, as defined by the Elementary and Secondary Education Act of 1965,<sup>5</sup> and as libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).<sup>6</sup> Both definitions rely on the standards set by each individual state.

3. Some internal connections within an eligible school or library may not be eligible for E-rate support. In the *Universal Service First Report and Order*, the Commission stated that “a given service is eligible for support as a component of the institution’s internal connections only if it is necessary to transport information all the way to individual classrooms.”<sup>7</sup> The Commission elaborated on this policy in

---

<sup>2</sup> Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (dated Jan. 5, 2001) (Eagle Hill Commitment Adjustment (COMAD) Letter); Letter from USAC, Schools and Libraries Division, to Ross Wheadon, Italian Home for Children (dated Sept. 11, 2007) (Italian Home Funding Denial); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated May 10, 2006); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated Oct. 16, 2006) (collectively, Rural Alaska Appeal Decisions).

<sup>3</sup> 47 C.F.R. §§ 54.501-503.

<sup>4</sup> See 47 C.F.R. § 54.501(b)-(d); USAC website, Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at 3-4 (FCC Form 471 Instructions) (explaining that only schools and libraries meeting statutory eligibility standards may apply for support for eligible services), [http://www.universalservice.org/res/documents/sl/pdf/471i\\_fy05.pdf](http://www.universalservice.org/res/documents/sl/pdf/471i_fy05.pdf) (last visited Oct. 20, 2009).

<sup>5</sup> See 47 U.S.C. § 254(h)(7)(A). The definitions of elementary and secondary schools are the definitions of those terms created by each individual state. 20 U.S.C. § 7801(18), (38). Specifically, the term “elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that the term does not include any education beyond grade 12. 20 U.S.C. § 7801(20), (38). In addition, the statute excludes schools that have endowments of more than \$50 million or operate for profit. See 47 U.S.C. § 254(h)(4).

<sup>6</sup> See 47 U.S.C. § 254(h)(4). In addition, the library must have funding independent from any school, and may not operate as a for-profit business. 47 C.F.R. § 54.501(c). The LSTA states that a “library” may include a “private library or other special library, but only if the State ... determines that the library should be considered a library for the purposes” of the LSTA. 20 U.S.C. § 9122(1)(E).

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9017-18, 9021 at para. 459 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); see also *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is “not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings . . .”<sup>8</sup> Consistent with these orders, internal connections to dormitory rooms have been found to be ineligible for support under the E-rate program.<sup>9</sup> Specifically, in the *Anderson School Order* the Bureau stated that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms.<sup>10</sup>

4. *Eagle Hill Request for Review.* Although USAC initially approved Eagle Hill’s funding year 1998 request for internal connections to individual student dormitory rooms,<sup>11</sup> a subsequent review led USAC to find Eagle Hill ineligible for E-rate funding. Thus, USAC sought recovery of the \$77,430 it had disbursed to Eagle Hill for internal connections.<sup>12</sup> In its request for review, Eagle Hill states that it asked USAC whether E-rate program rules permitted discounts on internal connections for reaching dormitory rooms at its school, since its school serves children with learning disabilities and that structured study hall periods are held in the children’s dormitories for a minimum of two hours each night.<sup>13</sup> Eagle Hill explained to USAC that, because students are required to be in their rooms during those periods and the regular dormitory counselor supervisors are joined by paid teachers, the dormitory rooms should be treated as classrooms for purposes of funding under the E-rate program.<sup>14</sup> Eagle Hill further asserts that USAC informed Eagle Hill that Eagle Hill could argue that the dormitories are “acting” classrooms during the two hours per evening and, therefore, should be eligible for E-rate support.<sup>15</sup>

5. *Italian Home Request for Review.* During a routine Program Integrity Assurance review of Italian Home’s funding year 2007 request, USAC asked Italian Home what percentage of the dollars in

<sup>8</sup> *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; see also 47 C.F.R. § 54.506.

<sup>9</sup> *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*). The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. The term “Bureau” in this order refers to the Common Carrier Bureau prior to the change in 2002, and to the Wireline Competition Bureau after the change.

<sup>10</sup> *Id.* at 25612, para. 6. In addition, pursuant to the Commission’s guidance on permissible funding for internal connections, E-rate funding has been denied for a teachers’ center, despite its occasional use for student classroom instruction. See *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002).

<sup>11</sup> See Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (Feb. 9, 1999).

<sup>12</sup> See Eagle Hill COMAD Letter.

<sup>13</sup> See Email from EHSDevel@aol.com to Question@slcfund.org (dated Apr. 17, 1998).

<sup>14</sup> *Id.*

<sup>15</sup> See Email from Question@slcfund.org to EHSDevel@aol.com (dated Apr. 10, 1998). Specifically, the USAC employee directed Eagle Hill in the email to “indicate [its] unique situation as an attachment to” its FCC Form 471 application. *Id.* Based on the record, it does not appear that Eagle Hill provided such an attachment to its FCC Form 471.

its funding request were for telecommunications and Internet access services for dormitory or residence rooms.<sup>16</sup> When Italian Home replied that 81 percent was associated with its four residential programs and 19 percent was associated with its day school program,<sup>17</sup> USAC determined that the 81 percent associated with its residential programs was ineligible for E-rate program support and directed Italian Home to remove those expenses or explain why funding should be granted for those services.<sup>18</sup> Italian Home responded that the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, thus 100 percent of its services should be eligible for E-rate support.<sup>19</sup> USAC, however, only granted Italian Home discounts on the 19 percent of the purchases associated with its day school program.<sup>20</sup> In its request for review, Italian Home asserts that its student population consists of emotionally disturbed and learning disabled children ages five to twelve who require 24-hour per day care.<sup>21</sup> Italian Home acknowledges that it is primarily a residential facility and that the children in its four residential programs live in three separate buildings at two locations.<sup>22</sup> Italian Home again contends, as it did in its response to USAC, that, because the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, 100 percent of its services should be eligible for E-rate support.<sup>23</sup>

6. *Rural Alaska Requests for Review.* USAC denied Rural Alaska's funding year 2005 and 2006 requests for E-rate discounts for its Head Start, pre-kindergarten programs after finding that the state of Alaska did not define its elementary and secondary schools to include pre-kindergarten entities, such as the Head Start programs.<sup>24</sup> In its request for review, Rural Alaska argues that the early education provided through its Head Start program is a vital part of elementary education in Alaska.<sup>25</sup> It does not, however,

---

<sup>16</sup> Italian Home Request for Review, Attachment 3 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 11, 2007)). USAC performs a Program Integrity Assurance review to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, Program Integrity Assurance, <http://www.sl.universalservice.org/reference/6pia.asp> (last visited Oct. 20, 2009).

<sup>17</sup> Italian Home Request for Review, Attachment 4 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 11, 2007) (Italian Home June 11 Letter)).

<sup>18</sup> See Italian Home Request for Review, Attachment 5 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 12, 2007)).

<sup>19</sup> *Id.*, Attachment 6 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 12, 2007) (Italian Home June 12 Letter)).

<sup>20</sup> See Italian Home Funding Denial.

<sup>21</sup> See *id.*, Attachment 2 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 6, 2007)).

<sup>22</sup> *Id.*, Attachment 4 (Italian Home June 11 Letter).

<sup>23</sup> *Id.*, Attachment 6 (Italian Home June 12 Letter).

<sup>24</sup> See Rural Alaska Appeal Decisions at 2; see also USAC website, <http://www.usac.org/sl/applicants/step01/non-traditional-k-12/k-12-eligibility-table.aspx> (last visited Oct. 20, 2009).

<sup>25</sup> See Rural Alaska Requests for Review at 1.

address the specific issue of whether its programs, as determined by state law, are eligible for discounts under the E-rate program.<sup>26</sup>

### III. DISCUSSION

7. We deny the petitioners' requests for review and uphold USAC's decisions denying funding to these applicants because the locations at issue were ineligible for E-rate program support. As indicated above, consistent with the Commission's holdings with respect to internal connections funding, internal connections to student dormitory rooms have been found to be ineligible for E-rate support.<sup>27</sup> Thus, consistent with our precedent, we find that Eagle Hill's use of a dormitory room for tutoring for two hours a night does not qualify it to receive E-rate discounts for internal connections.<sup>28</sup> Similarly, Italian Home does not qualify for E-rate discounts for its residential facilities. Italian Home asserts that the Commonwealth of Massachusetts has held that its entire program is eligible for E-rate support.<sup>29</sup> Although Congress has delegated to the states discretion over which entities in the state provide primary or secondary education and are thus eligible to apply for support under the E-rate program,<sup>30</sup> the determination of which locations within a facility – classrooms or non-classroom locations – are eligible for support falls under the authority of the Commission.<sup>31</sup> Thus, as discussed above, we find that the provision of discounted services for residential facilities is inconsistent with the Commission's E-rate rules.<sup>32</sup> Accordingly, we deny Eagle Hill's and Italian Home's requests for review.

8. Rural Alaska misunderstands the criteria for eligibility, as explained above.<sup>33</sup> Although Rural Alaska asserts that early education provided by the Head Start program is a vital part of elementary education in Alaska, Head Start programs are only eligible in Alaska if the state defines elementary education to include these programs.<sup>34</sup> In its appeal decisions, USAC correctly observed that Alaska did not define elementary education to include Head Start programs.<sup>35</sup> Therefore, we affirm USAC's decision to deny E-rate program funding to Rural Alaska.

---

<sup>26</sup> See *supra* para. 2.

<sup>27</sup> See *supra* para. 3.

<sup>28</sup> We note that the Commission has previously concluded that "in certain limited instances, the use of telecommunications services offsite would . . . be integral, intermediate, and proximate to the education of students . . . and thus, would be considered to be an educational purpose." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208-09, paras. 17-19 (2003). We find, however, that providing service to dormitories in the manner described here is not one of those exceptional cases.

<sup>29</sup> See *supra* para. 5.

<sup>30</sup> See *supra* note 5.

<sup>31</sup> See, e.g., *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd. at 5440, para. 209 (concerning the eligibility of non-instructional buildings).

<sup>32</sup> See *supra* para. 3.

<sup>33</sup> See *supra* para. 2.

<sup>34</sup> *Id.*

<sup>35</sup> See Rural Alaska Appeal Decisions.

**IV. ORDERING CLAUSES**

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by Eagle Hill School, Italian Home for Children, and Rural Alaska Community Action Program, Inc. ARE DENIED.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## **Donna Salvidio**

---

**From:** SLD Problem Resolution Mailbox [sld-problem-resolution@vangent.com]  
**Sent:** Tuesday, May 03, 2011 3:39 PM  
**To:** Donna Salvidio  
**Subject:** RE: Attention: Megan/Case #22-222928  
**Attachments:** image001.jpg

**Donna,**

As it states in paragraph 5 of the Demand for Payment letter the funds are to be recovered the service provider.

Thank you,

Megan Allred

---

**From:** Donna Salvidio [mailto:dsalvidio@fletcherilton.com]  
**Sent:** Tuesday, May 03, 2011 1:51 PM  
**To:** SLD Problem Resolution Mailbox  
**Cc:** 'PJ McDonald'; 'Gene Labonte'; 'Lisa Gaskill'  
**Subject:** Attention: Megan/Case #22-222928

Dear Megan:

It was a pleasure speaking with you this afternoon concerning the above matter. As I mentioned, I represent the Form 471 applicant, Eagle Hill School, concerning its application number 84941.

It is not clear to me that the USAC has adjudicated BOTH the applicant and the service provider responsible for a Program rule violation. The attached documentation, while somewhat confusing, appears to show that the USAC is seeking to recover the funds solely from the Service Provider, Drahthaus Residential Networking, Inc. I am requesting clarification from the USAC as to the party or parties it deems responsible for the debt.

I have attached the Demand Payment Letter with the Funding Commitment Adjustment Report attached thereto. The last sentence of the third paragraph of the Demand Payment Letter states as follows: "If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report" (emphasis added). The Funding Commitment Adjustment Report shows that the funds are to be recovered from the Service Provider. There is nothing therein to indicate that the applicant is responsible for the repayment of the funds.

In addition to the Demand Payment Letter, I have attached a copy of the Commitment Adjustment Letter dated January 5, 2001. Again, this letter appears to state that the funds are being sought from the Service Provider, not the applicant. Paragraph 4 of the letter states: "If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future . . . ."

In response to the Commitment Adjustment Letter, the applicant filed a request for review. That request was denied pursuant to the attached FCC Order dated October 20, 2009.

Finally, I have attached a copy of the Sixth Report and Order issued by the FCC on September 28, 2010.



I would appreciate your assistance in clarifying whether the debt is the responsibility of both the applicant and the service provider, of solely the service provider. Again, my reading of the documentation leads me to believe that only the service provider is responsible for repayment.

I look forward to hearing from you. If you require additional information in order to make a determination, please feel free to contact me.

Regards,

Donna

\*\*\*\*\*

Donna Toman Salvidio, Esq.  
Fletcher Tilton PC  
The Guaranty Building  
370 Main Street, Suite 1100  
Worcester, MA 01608

Direct telephone: 508-459-8072  
Direct fax: 508-459-8372  
email: [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)  
[www.FletcherTilton.com](http://www.FletcherTilton.com)

**Fletcher Tilton** PC  
Attorneys at law

**The Guaranty Building**  
370 Main Street, 11th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**  
161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**  
171 Main Street  
Hyannis, MA 0126  
TEL 508.815.2600  
FAX 508.459.8300

To the extent that this communication contains any federal tax-related advice, please be advised that such advice is not intended to be used, and may not be used, for the purpose of: (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein. Fletcher Tilton PC is required to inform you that only formal written opinion letters, meeting the guidelines of the IRS Circular 230, may be relied upon for such purposes. This e-mail message is generated from the law firm of Fletcher Tilton PC, and may contain information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this e-mail information is prohibited. If you have received this e-mail in error, please notify the sender by return e-mail and delete it from your computer system.

Donna Salvidio

---

From: Donna Salvidio  
Sent: Tuesday, May 03, 2011 2:51 PM  
To: 'sld-problem-resolution@vangent.com'  
Cc: 'PJ McDonald'; 'Gene Labonte'; 'Lisa Gaskill'  
Subject: Attention: Megan/Case #22-222928  
Attachments: USAC Demand Payment Ltr. to Drahthaus 4.5.11 (00790199).PDF; Commitment Adjustment Ltr. USAC to EHS 1.5.10 (00790194).PDF; FCC 6th Report and Order 9.28.10 (00790204).PDF; FCC Order denying EHS request for review 10.20.2009 (00790201).PDF; image001.jpg

Dear Megan:

It was a pleasure speaking with you this afternoon concerning the above matter. As I mentioned, I represent the Form 471 applicant, Eagle Hill School, concerning its application number 84941.

It is not clear to me that the USAC has adjudicated BOTH the applicant and the service provider responsible for a Program rule violation. The attached documentation, while somewhat confusing, appears to show that the USAC is seeking to recover the funds solely from the Service Provider, Drahthaus Residential Networking, Inc. I am requesting clarification from the USAC as to the party or parties it deems responsible for the debt.

I have attached the Demand Payment Letter with the Funding Commitment Adjustment Report attached thereto. The last sentence of the third paragraph of the Demand Payment Letter states as follows: "If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report" (emphasis added). The Funding Commitment Adjustment Report shows that the funds are to be recovered from the Service Provider. There is nothing therein to indicate that the applicant is responsible for the repayment of the funds.

In addition to the Demand Payment Letter, I have attached a copy of the Commitment Adjustment Letter dated January 5, 2001. Again, this letter appears to state that the funds are being sought from the Service Provider, not the applicant. Paragraph 4 of the letter states: "If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future . . . ."

In response to the Commitment Adjustment Letter, the applicant filed a request for review. That request was denied pursuant to the attached FCC Order dated October 20, 2009.

Finally, I have attached a copy of the Sixth Report and Order issued by the FCC on September 28, 2010.

I would appreciate your assistance in clarifying whether the debt is the responsibility of both the applicant and the service provider, of solely the service provider. Again, my reading of the documentation leads me to believe that only the service provider is responsible for repayment.

I look forward to hearing from you. If you require additional information in order to make a determination, please feel free to contact me.

Regards,

Donna

\*\*\*\*\*

Donna Toman Salvidio, Esq.  
Fletcher Tilton PC  
The Guaranty Building  
370 Main Street, Suite 1100  
Worcester, MA 01608

Direct telephone: 508-459-8072  
Direct fax: 508-459-8372  
email: [dsalvidio@fletchertilton.com](mailto:dsalvidio@fletchertilton.com)  
[www.FletcherTilton.com](http://www.FletcherTilton.com)

**Fletcher Tilton** PC  
Attorneys at law

**The Guaranty Building**  
370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
TEL 508.459.8000  
FAX 508.459.8300

**The Meadows**  
167 Worcester Road, Suite 501  
Frammingham MA 01701-5315  
TEL 508.532.3500  
FAX 508.532.3100

**Cape Cod**  
171 Main Street  
Hyannis, MA 026  
TEL 508.815.2500  
FAX 508.459.8400

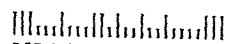
Fletcher Tilton<sup>PC</sup>

The Guaranty Building  
370 Main Street, 12th Floor  
Worcester, MA 01608-1779



7196 9008 9111 0752 9908

RETURN RECEIPT REQUESTED



USAC

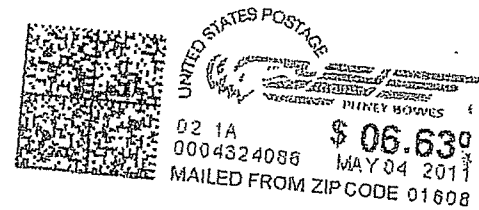
Schools and Libraries Division -

Correspondence Unit

100 South Jefferson Road

P.O. Box 902

Whippany, NJ 07981



5/7